
VS. HOUSTON, TEXAS

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MS. CAROLYN FERKO
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Houston, Texas 77002

Proceedings recorded by mechanical stenography,
transcript produced via computer.

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MR. JIM E. LAVINE, I
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Official Court Reporter:

Lanie M. Smith, CSR, RMR, CRR
Official Court Reporter
United States District Court
Southern District of Texas
515 Rusk
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Houston, Texas 77002

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1 your case, and I want to start by briefly describing the
2 Court's sentencing procedures.

3 The U.S. Supreme Court has held in the *Booker* case that
4 the sentencing guidelines are advisory and not mandatory for
5 judges.

6 *Booker* requires a sentencing court to consider
7 the guideline ranges, but it permits the Court to tailor the
8 sentence in light of other statutory concerns as well.

9 The Court, in the exercise of its sentencing
10 discretion, will rely on the factors that are set out in
11 Section 3553(a) to fashion an appropriate sentence in your case
12 to achieve the congressionally mandated purposes of sentencing
13 as set forth in the Sentencing Reform Act of 1984.

14 The Court will endeavor to faithfully apply the
15 directives within the guidelines in their entirety to determine
16 the total offense level and the criminal history category under
17 the guidelines. Thereafter, the Court will exercise its
18 discretion to determine the appropriate sentence.

19 In doing so, the Court will give considerable
20 weight to the sentencing range calculated under the guidelines.
21 Any comments by the Court in the course of this sentencing are
22 not to be construed as an indication that the Court believes
23 that the guidelines are mandatory or that they constrain the
24 Court's ultimate sentencing discretion.

25 The standard of proof for factual findings in

1 connection with sentencing is preponderance of the evidence;
2 and in determining whether that standard has been met, a
3 presentence report is generally considered sufficiently
4 reliable to be used by the trial court as evidence in making
5 the factual determinations which are required by the advisory
6 guidelines.

7 Now, in your case, Mr. Rincon, I have reviewed
8 quite a bit of information, including the presentence report,
9 which was prepared by the probation department; objections
10:50AM 10 filed and other material, which is all in the Court's file in
11 this case.

12 So with respect to the presentence report,
13 let's start with that.

14 Are there any objections by the government that
10:51AM 15 need rulings, Ms. Patel?

16 MS. PATEL: Your Honor, the government doesn't object
17 to the ultimate calculation; but we do object to the grouping
18 analysis undertaken by probation.

19 We don't believe that the tax offense should be
10:51AM 20 separated for the purposes of grouping. I think our
21 calculation ends up at the same place, but we agree with
22 Mr. Lavine that there should not be a separate grouping
23 analysis, that they should all be grouped together.

24 THE COURT: All right. But with respect to the final
10:51AM 25 offense level, it amounts to the same thing?

1 MS. PATEL: Yeah, it ends up being a wash; but we did
2 agree with Mr. Lavine that that's how they should be
3 calculated.

4 PROBATION OFFICER: Your Honor, we concur; and in the
10:51AM 5 revised PSR, we've noted that multiple count adjustment.

6 THE COURT: All right. So that's been resolved.

7 Nothing else on behalf of the government?

8 MS. PATEL: No.

9 THE COURT: Mr. Louis?

10:51AM 10 MR. LOUIS: Yes, Your Honor.

11 THE COURT: Do you have any objections that need
12 rulings?

13 MR. LOUIS: Yes, Your Honor. The only one that remains
14 outstanding from the defense perspective is Paragraph 107; so
10:52AM 15 although the government and the defense agree that all three
16 counts should be grouped together --

17 THE COURT: Right.

18 MR. LOUIS: -- which would result in our calculation
19 and we would request an advisory guideline range of 120 months.
10:52AM 20 The application of the guideline under 5G would say that
21 despite grouping that would result in a guideline of
22 120 months, you should then consider them separately, which
23 would then result in a guideline range of 156 months.

24 So that result is a 36-month increase.

25 THE COURT: Right.

1 MR. LOUIS: And so despite the application of the
2 guideline that specifically says you should not double count
3 and treat the tax count separately because a specific offense
4 characteristic of that is subsumed within the two counts, the
5 conspiracy and the substantive count, that is really taken away
6 by the application of the guideline range in 5G, which says,
7 well, you consider them separately, which now results in a
8 combined advisory guideline range of 156 months.

9 And so on one hand, the guideline specifically
10 gives guidance; but in the application of another guideline, it
11 undermines that and says, well, for purposes of determining the
12 relative harm and the advisory guideline, it's 156 months.

13 And that's our objection.

14 THE COURT: All right. Ms. Patel, what's your position
15 on that?

16 MS. PATEL: Your Honor, the government's position is
17 that while they should not be double counted for the purposes
18 of a grouping analysis, Section 5G1.1 requires that the sort of
19 statutory maximums be stacked when the offense -- sort of the
20 maximum would not account for the full range of a defendant's
21 conduct, which we think is this case.

22 And so doing that, which I think the probation
23 department concurs in, would result in a statutory maximum of
24 156 months.

25 And I would note that that's how the statutory

1 maximum has been calculated for every defendant in this range
2 of cases.

3 THE COURT: All right. I'm going to overrule your
4 objection on that, Mr. Louis.

10:54AM

5 So, therefore, the Court will adopt the
6 presentence report and these are the guidelines findings:

10:54AM

7 The total offense level is 43 with a criminal
8 history category of 1. That yields a recommended period of
9 incarceration under the advisory guidelines of 156 months, a
10 period of supervised release of one to three years, a fine
11 range from 25,000 to \$633,689,345.12 and a \$300 special
12 assessment.

10:55AM

13 All right. Ms. Patel, obviously I've reviewed
14 your 5K in this case as well, and you are asking me to impose a
15 sentence of 70 months in this case.

16 So what would you like to say about sentencing?

17 MS. PATEL: Thank you, Your Honor.

10:55AM

18 Your Honor, I'm not going to stand up here and
19 belabor the facts of this case because Mr. Rincon has been
20 pending before this Court for a number of years.

21 THE COURT: Yes.

10:55AM

22 MS. PATEL: Your Honor is very familiar with the facts.
23 Your Honor has sentenced a number of individuals in this case
24 arising from this conspiracy that Mr. Rincon and
25 Mr. Abraham Shiera were at the center of; and so Your Honor is

1 well aware of those facts.

2 The only thing I will say is that they are very
3 serious and very significant and really the kind of level of
4 Mr. Rincon's involvement was significant, which is reflected, I
10:56AM 5 think, both in his guideline sentence based on sort of the
6 amount of money that his companies received as a result of his
7 corrupt conduct and in terms of his money judgment of
8 51 million, which is the highest of any defendant in this case.

9 So the government would submit to the Court
10:56AM 10 that this is very serious and significant conduct.

11 But having said that, Mr. Rincon has been
12 before this Court for now, you know, over six years and
13 Your Honor is aware of the level of cooperation of the
14 defendants in this case and Mr. Rincon's has been
10:56AM 15 extraordinary. He is among the two best cooperators in this
16 case; and I can say that in my almost ten years as a
17 prosecutor, he is one of the best, if not one of the two best,
18 cooperators that I have ever worked with.

19 THE COURT: The other one being Mr. Shiera?

10:57AM 20 MS. PATEL: Yes. And so, you know, I can't understate
21 the amount of assistance that Mr. Rincon has provided to the
22 government. We have been able to make a number of different
23 cases, including most significantly the cases that are pending
24 before Judge Hoyt involving a group of individuals known as the
10:57AM 25 management team, that goes up to the highest levels of PDVSA

1 and the Venezuelan government and that would not have been
2 possible without Mr. Rincon's assistance.

3 Mr. Rincon stood ready to testify at a trial
4 for Paulo Murta, which was dismissed a few weeks before the
10:57AM 5 trial and is currently on appeal and Mr. Rincon, if that case
6 comes back, will testify then.

7 He has helped with cases that are not even
8 connected to this set of cases; and as the government has laid
9 out in its sentencing memorandum, and I believe the defense has
10:58AM 10 as well, there are two additional individuals who he's helped
11 with that at least with respect to one of them, the
12 apprehension would not have been possible without his
13 assistance. So his cooperation has been extraordinary and
14 cannot be understated.

10:58AM 15 But that said, his conduct was very
16 significant. I think everyone in this courtroom at this point
17 is well aware of the situation in Venezuela and the way that
18 the sort of State has deteriorated there in large part because
19 of the conduct at issue in these cases and it's very
10:58AM 20 significant and it had a very significant impact on the people
21 of that country.

22 And much of that was a result of the corruption
23 that flowed through this district, through Houston, and because
24 of Mr. Rincon's conduct. And so we are still asking for a
10:58AM 25 significant custodial sentence because we would submit that

1 Mr. Rincon obviously is receiving a significant 5K. We've only
2 asked for that for one additional defendant, and my
3 understanding is that is extremely high for the Southern
4 District of Texas. I don't think -- it took a lot of approvals
5 to get --

10:59AM

6 THE COURT: I'm sure it did.

7 MS. PATEL: -- to get to that point. So Mr. Rincon,
8 you know, we are asking for a very significant reduction.

9 But Mr. Rincon also received a benefit at the
10 point at which he entered his plea agreement. He pleaded
11 guilty to a superseding information, not to the indictment in
12 this case; and had he pleaded guilty to that indictment, he
13 would have been facing, you know, life in prison.

10:59AM

14 And so he received that benefit both at the
15 front end and now at the back end; and so it's the government's
16 position that the 70-month sentence that we're asking for is
17 reasonable.

10:59AM

18 But we do want to make clear to Your Honor just
19 how significant Mr. Rincon's cooperation has been and how
20 meaningful it's been to the government's prosecution in these
21 cases.

10:59AM

22 THE COURT: So I think when we were discussing
23 Mr. Shiera's sentencing, he was a gold-plated cooperator.

24 MS. PATEL: Platinum, I believe Mr. Pearson said.

11:00AM

25 THE COURT: I think that's what he called them.

1 Where would you rank Mr. Rincon?

2 MS. PATEL: I mean, at the same level. I'm not one to
3 sort of rank precious metals; but, you know, I like jewelry and
4 Mr. Rincon is, you know, Van Cleef & Arpels if you will. He's
11:00AM 5 at the highest level. He's a fantastic cooperator. I mean, I
6 can't understate that, like I said.

7 THE COURT: All right. And as I recall, Mr. Shiera's
8 sentence was 12 months and a day?

9 MS. PATEL: Mr. Shiera's sentence was 12 months and a
11:00AM 10 day. I do think there are some distinguishing factors.

11 One, Mr. Rincon also pleaded guilty to a tax
12 offense, which Mr. Shiera did not. Mr. Shiera, as you're
13 aware, was the first person in the door; and, you know, that
14 was very significant to the government.

11:00AM 15 And Mr. Rincon made far more money off of this
16 scheme than Mr. Shiera. His company made more money. At a
17 conservative estimate, it was above 300 million. Your Honor is
18 aware we took a 75 percent haircut for cost of goods sold,
19 which was very high. But we were very conservative. We only
11:01AM 20 calculated that number using the four companies that were named
21 in the indictment even though far more of his companies
22 received money.

23 And I think the difference in terms of the
24 amount of money that he made from the scheme is also reflected
11:01AM 25 in the money judgment, which was 51 million; and Mr. Shiera's,

1 Your Honor is aware, was significantly lower.

2 So we do think that those are very important
3 differences to point out between Mr. Rincon and Mr. Shiera.

4 THE COURT: All right. Thank you.

11:01AM 5 Mr. Louis, are you going to argue for the
6 defendant on sentencing?

7 MR. LOUIS: Yes, Your Honor.

8 THE COURT: All right.

9 MR. LOUIS: First, let me start off by saying that
11:01AM 10 Mr. Rincon is not the same person who appeared in this
11 courthouse in December 16th of 2015. Since that time,
12 Mr. Rincon pled guilty; accepted responsibility for his conduct
13 and after that, began to cooperate.

14 As the Court has heard from the government, the
11:02AM 15 terms that are used in the government's sentencing memorandum
16 to convey to the Court his cooperation is something that you
17 rarely hear. I've been practicing in this courthouse for
18 30 years and rarely do you ever have a sentencing memorandum by
19 the government that uses certain terms and I want to just make
11:02AM 20 sure I say them again for the record.

21 The level of information -- and this is on
22 page -- I think it's Page 11, of the sentencing memorandum --
23 the level of information was so significant that the government
24 was able to target 19 individuals.

11:02AM 25 The cooperation was so significant that but for

1 his cooperation, it was highly unlikely that the government
2 would be able to target high-ranking officials.

3 So Mr. Rincon realized his crimes, he accepted
4 responsibility for his crimes, and then he began to cooperate
11:03AM 5 with the government to make amends for those crimes. And that
6 is what the sentencing guidelines is all about, making sure
7 that some person who stands before a Court and who has engaged
8 in conduct, first of all, accepts responsibility for that
9 conduct and then begins to cooperate to make amends.

11:03AM 10 As the government just alluded to the Court, a
11 55 percent reduction is rarely, if ever, granted by the
12 government so that tells the Court the significance of his
13 cooperation.

14 As outlined in my sentencing memorandum, I've
11:03AM 15 outlined and took pictures of the binders of materials that
16 Mr. Rincon provided. The information he provided was so
17 detailed that the government could use that information to, for
18 example, with respect to one individual, who is identified in
19 my sentencing memorandum -- and I won't mention his name, but
11:04AM 20 he is such a high-level target that Mr. Rincon was able to
21 provide information regarding his whereabouts and they were
22 able to locate that individual and arrest him.

23 Mr. Rincon not only provided cooperation with
24 respect to the crimes associated with the corruption with
11:04AM 25 PDVSA, but he provided cooperation when the government sought

1 his assistance outside of that. He provided cooperation to
2 governments, foreign governments who asked his assistance in
3 identifying and locating individuals. He also provided
4 information regarding the location of a person who had
5 committed murder in this country and had fled. So that tells
6 the Court the detail by which Mr. Rincon sought to cooperate.

7 I know the government has asked for a sentence
8 of 70 months. As I've stated previously, the sentencing
9 guidelines already tell the Court that for purposes of harm,
10 because it's a tax count, the tax count should be not double
11 counted, it should be part of the calculation for the
12 underlying crime.

13 So when the Court asked questions about
14 Mr. Rincon and Mr. Shiera, the government said, "Well, he
15 should receive additional time for that."

16 Well, the guidelines have already given the
17 Court some guidance on that. The Fifth Circuit also in
18 *U.S. versus Haltom* indicated for purposes of tax evasion, it
19 shouldn't be double counted.

20 So we would ask the Court to look at Mr. Rincon
21 and I think the only individual that comes close to Mr. Rincon,
22 as the Court has already alluded to, is Mr. Shiera.

23 In my sentencing memorandum, I have outlined
24 factors that the Court -- or information the Court should
25 review in applying the factors under 3553; and I'm going to go

1 through those just quickly.

2 THE COURT: All right.

3 MR. LOUIS: For purposes of the nature and
4 circumstances of the offense, Mr. Rincon timely pled guilty.
11:06AM 5 No one is disputing that. He has acknowledged his wrongdoing.

6 And Mr. Rincon forfeited all of the ill-gotten
7 gains. In my 30 years of practice, I'm not aware of anyone
8 forfeiting that significant amount of money.

9 Now, the government has said, well,
11:07AM 10 Mr. Rincon's received a greater benefit from his cooperation;
11 and not to differ with the government, Mr. Shiera, as outlined
12 on Page 18 of their sentencing memorandum, his companies, the
13 benefit to his companies exceeded the benefit to Mr. Rincon's
14 companies, however he collected a lesser share.

11:07AM 15 The amount that he personally benefitted was
16 18,000,824 and the amount that Mr. Rincon benefitted of
17 51 million. The difference is not -- is that Mr. Rincon was
18 able to collect more. But guess what? He forfeited every dime
19 of that money.

11:07AM 20 Personal history. Mr. Rincon is a self-made
21 man. He grew up in Maracaibo, Venezuela. He worked hard. He
22 learned the trade in oil and gas and established his own
23 company.

24 As I've alluded in the sentencing memorandum,
11:08AM 25 Mr. Rincon is mindful of the suffering of individuals in

1 Venezuela. I have provided information to the Court about his
2 assistance to those in his close association with a parish,
3 San Antonio Maria Claret in Maracaibo.

4 The Court has received numerous character
11:08AM 5 letters. I can tell the Court I tried to read those, but I'm
6 sure the Court has those; and they all indicate that Mr. Rincon
7 is a man, a family man, a man of faith and a man of community.

8 A sentence to reflect the seriousness of the
9 case. No one is undermining or calling into question that this
11:08AM 10 is not a serious crime. Certainly Mr. Rincon's choices
11 contributed to the corruption. He recognized that and has pled
12 guilty.

13 His arrest, his prosecution, his conviction, he
14 actually served eight months before he was released in this
11:09AM 15 case and his forfeiture of all ill-gotten gains serves as a
16 significant deterrent.

17 Given his level of cooperation, we believe a
18 sentence much lower than what the government has recommended is
19 appropriate.

11:09AM 20 A sentence that serves as deterrence.
21 Mr. Rincon's life, as the Court can imagine, has significantly
22 been impacted. He has not worked in over five years or six
23 years, his finances in ruin, his family dynamics is in turmoil.

24 Mr. Rincon cooperated at significant risk to
11:09AM 25 his own safety and that of his family. I can inform the Court

1 that his family is here; his wife is here; his children are
2 here, all with the exception of one son, Jose Roberto, who is
3 in Spain.

4 At one time his spouse, Lila Maria, traveled to
5 Spain; and because of a complaint lodged in Spain by Bariven, a
6 subsidiary of PDVSA, she was detained in country, detained for
7 almost a year -- over a year and a half.

8 And so Mr. Rincon, on occasion, receives
9 messages passed to him through individuals contacting his
10 family and friends to let him know that they're aware of his
11 cooperation.

12 As far as resources, his finances are totally
13 in shambles. He has no resources except for the home.

14 Protection of the public. Mr. Rincon is not a
15 violent offender; and he is not a threat to anyone, certainly
16 not a threat to the community.

17 Rehabilitation. Mr. Rincon has shown his
18 rehabilitation through his many, many countless hours and years
19 of cooperation.

20 And lastly, as the Court keyed in and focused
21 on, a sentence to be imposed that does not create unwarranted
22 sentencing disparities.

23 I submit to the Court when the Court evaluates
24 Mr. Rincon's conduct in his cooperation and evaluates the
25 guidance of the Fifth Circuit and the guidance of the

1 guidelines itself in determining whether a 36-month increase is
2 warranted in this case, I think the Court should look at
3 Mr. Shiera's sentence and certainly impose a sentence that is
4 either less than that or comparable to that.

11:12AM 5 And let's see. During the time that Mr. Rincon
6 was cooperating with the government, as the government has
7 alluded to for six years, it's by no small measure. He was
8 under house arrest. He was not free to roam this community.
9 He also had an ankle monitor for six years. He complied with
10 that.

11 I can't think of anyone in any case, even a
12 case of this significance, who has provided the level of
13 cooperation to the government to express his deep regret,
14 accept responsibility for his conduct.

11:13AM 15 As a result, I'm asking the Court in analyzing
16 the sentencing factors under 3553(a), that this Court -- and
17 this may sound interesting to make this comment since I was a
18 prosecutor for almost 21 years and having heard this term, it
19 always used to make me gristle a little bit -- but in this
11:13AM 20 context, given the circumstances and this Court's unique
21 position of having heard the facts and circumstances of all the
22 defendants in this case, some of which Mr. Rincon cooperated
23 against, I'm asking the Court to enter a sentence of time
24 served.

11:13AM 25 Thank you, Your Honor.

1 THE COURT: Thank you, Mr. Louis.

2 Mr. Rincon, you have the opportunity, if you
3 wish, to say anything that you would like to say; and you can
4 come forward and use the microphone, please.

11:13AM

5 MR. LOUIS: Just for the record, Your Honor, Mr. Rincon
6 does speak English; but for purposes of being able to make sure
7 he conveys to the Court his comments, he prefers to give those
8 comments in his native language, Spanish.

9 THE COURT: No worries.

11:14AM

10 Mr. Rincon.

11 THE DEFENDANT: Your Honor, good morning.

12 THE COURT: Good morning.

13 THE DEFENDANT: Thank you for allowing me to have some
14 small reflection before this Honorable Court.

11:14AM

15 I am a family man, married 40 years. And as
16 the fruit of this marriage, I have four children, among which
17 three are present at this time. They're all American citizens,
18 who live here in Houston.

19 My wife, who has accompanied me for over
20 40 years, is also here with me.

11:15AM

21 Out of this family unit, I also have nine
22 grandchildren, all United States citizens. I come from a
23 Christian family in which education and morality has been
24 prevalent among us.

11:15AM

25 I lost my father at the age of 36. I had to

1 reorganize my life in that married with four children, I had to
2 take the reins of my family. I am the oldest brother among
3 eight, and I devoted myself to supporting my mom so that all of
4 my siblings would finish their schooling and become
5 professionals.

11:16AM

6 I come from a town call Maracaibo from the
7 Zulia state where the main economy comes from oil activity.

8 I have been in this oil business for over
9 40 years and upon developing this, I was led to make mistakes
10 for which I am responsible and I stand before you, Your Honor,
11 to give you thanks and thanks to all present for the
12 opportunity to allow me to express with my own words and to
13 take responsibility for any act that I might have committed
14 throughout the course of my professional life.

11:17AM

15 Your Honor, I come here as a man responsible
16 for his actions. I apologize to God, to justice, to you, to my
17 family for my mistakes, for the harms that I might have caused.

18 It has been a lengthy journey of learning,
19 reflection and guidance toward a better future. My intention,
20 once again, is to express to you my humility and accept
21 whatever your decision.

11:18AM

22 Thank you.

23 THE COURT: Thank you, sir.

24 All right. Anything else, Ms. Patel, on behalf
25 of the government?

11:18AM

1 MS. PATEL: No, Your Honor.

2 THE COURT: All right. Thank you.

3 All right. I'm going to grant the government's
4 5K motion, and I'm also going to vary downward beyond the
5 70 months that the government has requested under 3553(a) to
6 avoid unwarranted sentencing disparities with other defendants.

7 And therefore, pursuant to the Sentencing
8 Reform Act of 1984, it is the judgment of the Court that the
9 defendant is hereby committed to the custody of the Bureau of
10 Prisons to be imprisoned for a term of 18 months as to
11 Counts 1S, 2S and 3S, all to be served concurrently for a total
12 of 18 months.

13 Upon release from imprisonment, the defendant
14 shall be placed on supervised release for a term of one year as
15 to each of Counts 1S, 2S and 3S, all terms to run concurrently
16 for a total of one year.

17 Within 72 hours of release from the custody of
18 the Bureau of Prisons, the defendant shall report in person to
19 the probation office in the district to which the defendant is
20 released.

21 While on supervised release, the defendant
22 shall not commit another federal, state or local crime; shall
23 comply with the standard conditions that have been adopted by
24 this Court; abide by any mandatory conditions required by law;
25 and shall comply with the following additional conditions:

1 Based on the Court's determination that you
2 pose a low risk of future substance abuse, the mandatory drug
3 testing requirement upon release from imprisonment is
4 suspended.

11:20AM

5 You must immediately report, continue to
6 report, or surrender to U.S. Immigration and Customs
7 Enforcement and follow all of their instructions.

8 Is he a dual citizen or -- I can't remember
9 from the presentence report.

11:20AM

10 MS. PATEL: He is not a dual citizen.

11 THE COURT: He's a citizen of Venezuela?

12 MR. LAVINE: He is, Your Honor, a citizen of Venezuela.
13 He is under deferred action at the moment.

14 THE COURT: Okay. Thank you.

11:20AM

15 You must immediately report, continue to report
16 or surrender to U.S. Immigration and Customs Enforcement and
17 follow all of their instructions and reporting requirements
18 until any deportation proceedings that may be instituted are
19 completed.

11:20AM

20 If you are ordered deported from the
21 United States, you must remain outside the United States unless
22 legally authorized to reenter. If you reenter the
23 United States, you must report to the nearest probation office
24 within 72 hours after you return.

11:21AM

25 You must seek proper documentation from

1 U.S. Immigration and Customs Enforcement authorizing you to
2 work in the United States.

3 You're prohibited from employment or acting in
4 a fiduciary role during your term of supervision.

11:21AM

5 You must provide the probation officer with
6 access to any requested financial information and authorize the
7 release of that financial information. The probation office
8 may share the financial information with the U.S. Attorney's
9 Office.

11:21AM

10 You must not incur new credit card charges or
11 open additional lines of credit without the approval of the
12 probation officer.

13 It is further ordered that the defendant shall
14 pay to the United States a special assessment of \$300.

11:21AM

15 It is further ordered that the defendant shall
16 pay a fine to the United States of --

17 PROBATION OFFICER: The amount, Your Honor, is
18 \$56,426.40.

11:21AM

19 THE COURT: Thank you. The fine is \$56,426.40 -- did
20 you say "46"?

21 PROBATION OFFICER: Yes, Your Honor.

22 THE COURT: 46 cents, not that it matters.

11:22AM

23 Having assessed the defendant's ability to pay,
24 payment of the total criminal monetary penalties shall be due
25 as follows:

1 The defendant shall begin payment immediately.
2 Any unpaid balance due within 180 days of the judgment in this
3 case. All payments to be made through the United States
4 District Court, Southern District of Texas.

11:22AM

5 The defendant shall forfeit his interest in the
6 property named in the notice of forfeiture to the United States
7 as set forth in the final orders of forfeiture executed by this
8 Court on June 16, 2016.

11:22AM

9 I do need to advise Mr. Rincon of his rights to
10 appeal.

11:22AM

11 Mr. Rincon, you generally have a right to
12 appeal your conviction and your sentence; however, you may give
13 up some or all of those rights in a plea agreement. And you
14 have entered into a plea agreement in this case which does, in
15 fact, waive some or all of your rights. These waivers are
16 generally enforceable; however, if you believe the waiver is
17 invalid, you can present that theory to the Court of Appeals.

11:23AM

18 If you file an appeal in this case, it must be
19 filed within 14 days of the entry of judgment. If you cannot
20 afford to pay the costs on appeal, you can ask to proceed
21 without paying costs, but you have the right to have an
22 attorney appointed to represent you on appeal if you cannot
23 afford an attorney.

11:23AM

24 I have signed the GPS order. No counts to
25 dismiss.

1 Anything else on behalf of the government?

2 MS. PATEL: Yes, Your Honor, two things.

3 One, Your Honor, we ask that Mr. Rincon receive
4 credit for time served. He did serve a number of months.

11:23AM

5 THE COURT: I think it was about seven and a half
6 months, I think, that he was in custody. He should get
7 credit -- the BOP should give him credit for that. If they
8 don't, I will.

9 MS. PATEL: Okay. Great.

11:23AM

10 And then in addition to the final order of
11 forfeiture in 2016, there was a money judgment that was --
12 sorry. There was a final order of forfeiture separate and
13 apart from the money judgment that was issued by this Court on
14 December 14th of 2022; and we just ask that that be made part
15 of the judgment.

11:23AM

16 THE COURT: That will be made a part of the judgment.

17 All right. Mr. Louis, any recommendation to
18 the BOP on placement?

19 MR. LOUIS: Yes, Your Honor, Bastrop or Beaumont
20 because Beaumont is the closest one.

11:24AM

21 THE COURT: Bastrop or Beaumont. I will make a
22 recommendation to the BOP.

23 Voluntary surrender is fine with me. No
24 problem with the government?

11:24AM

25 MS. PATEL: No objection.

1 THE COURT: All right. Has he already signed --
2 Mr. Louis, he does need to sign that before he leaves for
3 voluntary surrender.

4 All right. Yes, sir.

11:24AM

5 MR. LAVINE: Your Honor, if I might also ask, the fine
6 that you have assessed is based on the incarceration?

7 THE COURT: Yes.

11:24AM

8 MR. LAVINE: I believe if I recall having attended
9 Mr. Shiera's sentencing that you reduced the amount of fine
10 based on the fact that he had done -- served, I think, five
11 months in custody already.

12 THE COURT: You know, you're right.

11:24AM

13 MR. LAVINE: Mr. Rincon has done almost eight months in
14 custody, and I know you reduced the fine based on incarceration
15 to 6,000 for Mr. Shiera.

16 I would ask you to reduce the fine amount for
17 Mr. Rincon based on his ability to pay, which is basically
18 zero.

11:25AM

19 THE COURT: All right. I'll reduce it based on the
20 time he's already served.

21 You say he has no assets to pay a fine?

22 MR. LAVINE: He has no assets to pay a fine,
23 Your Honor.

24 THE COURT: Let's see. Let me look.

11:25AM

25 The presentence report shows a total monthly

1 cash flow of \$60,000.

2 MR. LAVINE: He has a negative -- I don't know if the
3 PSR information you have is current. I believe the information
4 that Mr. Louis provided, that we and Mr. Ryerson provided
11:25AM 5 yesterday or the day before was he has a negative cash flow.
6 He has no positive cash flow whatsoever.

7 THE COURT: All right. Probation?

8 PROBATION OFFICER: Your Honor, the defense counsel did
9 file a supplemental response to the presentence report on
11:26AM 10 January 23rd, which updated the defendant's financial profile.
11 It shows that he has a negative monthly cash flow of \$7,718.

12 THE COURT: I'll waive a fine in this case.

13 MR. LAVINE: Thank you, Your Honor.

14 THE COURT: No fine.

11:26AM 15 MR. LAVINE: Second, Your Honor, may he report to
16 probation today to remove the ankle monitor, which was a
17 condition of his pretrial release?

18 THE COURT: The order that I signed requires him to --
19 do you have any objection to him taking the ankle monitor off
11:26AM 20 today?

21 MS. PATEL: I think, Your Honor, we'd ask that he keep
22 it on until he reports.

23 THE COURT: Until he reports. So the order that I
24 signed requires him to report to probation 24 hours before he
11:26AM 25 reports to the BOP so that the ankle monitor can be removed.

1 MR. LAVINE: And he will get notice from the BOP about
2 the date of surrender?

3 THE COURT: Correct. Yes, sir.

4 All right. If there's nothing else, we're
5 adjourned.

6 Thank you.

7 MS. PATEL: Thank you, Your Honor.

8 THE COURT: Thank you.

9 (The proceedings were adjourned.)

10 * * * *

11 REPORTER'S CERTIFICATE

12 I, Lanie M. Smith, CSR, RMR, CRR, Official
13 Court Reporter, United States District Court, Southern District
14 of Texas, do hereby certify that the foregoing is a true and
15 correct transcript, to the best of my ability and
understanding, from the record of the proceedings in the
above-entitled and numbered matter.

16 /s/ Lanie M. Smith
17 Official Court Reporter
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19
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21
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\$	4	14:22, 16:18, 20:6 about [6] - 8:16, 14:6, 15:13, 17:1, 26:5, 29:1 above [2] - 12:17, 29:14 above-entitled [1] - 29:14 Abraham [1] - 8:25 abuse [1] - 23:2 accept [2] - 19:14, 21:20 accepted [2] - 13:12, 14:3 accepts [1] - 14:8 access [1] - 24:6 accompanied [1] - 20:19 account [1] - 7:20 achieve [1] - 4:12 acknowledged [1] - 16:5 Act [2] - 4:13, 22:8 act [1] - 21:13 acting [1] - 24:3 action [1] - 23:13 actions [1] - 21:16 activity [1] - 21:7 actually [1] - 17:14 addition [1] - 26:10 additional [5] - 10:10, 11:2, 15:15, 22:25, 24:11 adjourned [2] - 29:5, 29:9 adjustment [1] - 6:5 adopt [1] - 8:5 adopted [1] - 22:23 advise [1] - 25:9 advisory [6] - 4:4, 5:5, 6:19, 7:8, 7:12, 8:9 afford [2] - 25:20, 25:23 after [2] - 13:13, 23:24 again [3] - 3:7, 13:20, 21:20 against [1] - 19:23 age [1] - 20:25 agree [3] - 5:21, 6:2, 6:15 agreement [3] - 11:10, 25:13, 25:14 all [44] - 3:2, 3:15, 3:16, 3:21, 3:24, 5:10, 5:23, 5:24, 6:6, 6:15, 7:14, 8:3, 8:13, 12:7, 13:4, 13:8, 14:6, 14:8, 16:2, 16:6, 17:6, 17:15, 18:2, 19:21, 20:17, 20:22, 21:3, 21:11, 21:24, 22:2, 22:3, 22:11, 22:15, 23:7, 23:17, 25:3, 25:13, 25:15, 26:17, 27:1, 27:4, 27:19, 28:7, 29:4 allow [1] - 21:12 allowing [1] - 20:13 alluded [4] - 14:10, 15:22, 16:24, 19:7 almost [4] - 9:16, 18:7, 19:18, 27:13 already [6] - 15:9, 15:16, 15:22, 27:1, 27:11, 27:20 also [10] - 11:9, 12:11, 12:24, 15:3, 15:17, 19:9, 20:20, 20:21, 22:4, 27:5 although [1] - 6:15 always [1] - 19:19 am [3] - 20:15, 21:2, 21:10 amends [2] - 14:5, 14:9
\$300 [2] - 8:11, 24:14 \$56,426.40 [2] - 24:18, 24:19 \$60,000 [1] - 28:1 \$633,689,345.12 [1] - 8:11 \$7,718 [1] - 28:11	40 [3] - 20:15, 20:20, 21:9 43 [1] - 8:7 46 [2] - 24:20, 24:22 4:15-CR-00654-1 [1] - 1:4	
/	5	
/s [1] - 29:16	51 [3] - 9:8, 12:25, 16:17 515 [1] - 2:7 55 [1] - 14:11 5G [2] - 6:20, 7:6 5G1.1 [1] - 7:18 5K [3] - 8:14, 11:1, 22:4	
1	6	
1 [1] - 8:8 1000 [1] - 1:18 107 [1] - 6:14 11 [1] - 13:22 12 [2] - 12:8, 12:9 120 [2] - 6:19, 6:22 14 [1] - 25:19 1400 [1] - 1:15 14th [1] - 26:14 15-654-1 [1] - 3:4 156 [5] - 6:23, 7:8, 7:12, 7:24, 8:9 16 [1] - 25:8 16th [1] - 13:11 18 [3] - 16:12, 22:10, 22:12 18,000,824 [1] - 16:16 180 [1] - 25:2 19 [1] - 13:24 1984 [2] - 4:13, 22:8 1S [2] - 22:11, 22:15	6,000 [1] - 27:15 620 [1] - 2:3	
	7	
	70 [3] - 8:15, 15:8, 22:5 70-month [1] - 11:16 72 [2] - 22:17, 23:24 75 [1] - 12:18 770 [1] - 2:2 77002 [3] - 1:19, 1:23, 2:8 77056 [1] - 2:3	
	8	
2	8004 [1] - 2:8 811 [1] - 1:22	
20005 [1] - 1:16 2015 [1] - 13:11 2016 [2] - 25:8, 26:11 2022 [1] - 26:14 2023 [1] - 1:7 21 [1] - 19:18 2300 [1] - 1:19 23rd [1] - 28:10 24 [1] - 28:24 25 [1] - 1:7 25,000 [1] - 8:11 2500 [1] - 1:23 2S [2] - 22:11, 22:15	A	
3	a [117] - 3:19, 3:25, 4:6, 5:2, 5:8, 5:22, 6:1, 6:21, 6:23, 6:24, 7:3, 7:7, 7:18, 7:20, 7:23, 8:7, 8:8, 8:9, 8:10, 8:11, 8:14, 8:20, 8:23, 9:6, 9:16, 9:22, 9:24, 10:3, 10:4, 10:20, 10:22, 10:24, 11:1, 11:4, 11:8, 11:9, 11:11, 11:23, 12:5, 12:8, 12:9, 12:11, 12:16, 12:18, 13:18, 14:7, 14:10, 14:20, 15:4, 15:7, 15:10, 16:10, 16:14, 16:20, 17:2, 17:7, 17:8, 17:10, 17:15, 17:17, 17:20, 18:5, 18:7, 18:14, 18:15, 18:16, 18:21, 19:1, 19:3, 19:11, 19:15, 19:17, 19:19, 19:23, 20:15, 20:22, 21:6, 21:15, 21:18, 21:19, 22:10, 22:11, 22:14, 22:16, 23:2, 23:8, 23:10, 23:11, 23:12, 24:4, 24:14, 24:16, 25:11, 25:13, 25:14, 26:4, 26:5, 26:11, 26:12, 26:16, 26:21, 27:21, 27:22, 27:25, 28:2, 28:5, 28:9, 28:11, 28:12, 28:16, 29:13 abide [1] - 22:24 ability [3] - 24:23, 27:17, 29:13 able [7] - 9:22, 13:24, 14:2, 14:20,	
30 [2] - 13:18, 16:7 300 [1] - 12:17 3553 [1] - 15:25 3553(a) [3] - 4:11, 19:16, 22:5 36 [1] - 20:25 36-month [2] - 6:24, 19:1 3S [2] - 22:11, 22:15		

<p>AMERICA ^[1] - 1:4 America ^[1] - 3:5 American ^[1] - 20:17 among ^[4] - 9:15, 20:16, 20:24, 21:2 amount ^[9] - 9:6, 9:21, 12:24, 16:8, 16:15, 16:16, 24:17, 27:9, 27:16 amounts ^[1] - 5:25 an ^[8] - 3:22, 4:11, 4:22, 6:19, 19:9, 25:18, 25:21, 25:23 analysis ^[3] - 5:18, 5:23, 7:18 analyzing ^[1] - 19:15 and ^[147] - 3:9, 3:10, 3:12, 3:14, 3:16, 3:19, 3:21, 4:1, 4:4, 4:16, 5:2, 5:10, 6:4, 6:15, 6:19, 7:1, 7:3, 7:5, 7:9, 7:11, 7:12, 7:13, 7:22, 7:25, 8:6, 8:11, 8:14, 8:18, 8:24, 8:25, 9:3, 9:7, 9:10, 9:12, 9:14, 9:16, 9:20, 10:1, 10:5, 10:8, 10:9, 10:13, 10:17, 10:19, 10:20, 10:22, 10:23, 10:24, 11:2, 11:12, 11:14, 11:15, 11:19, 12:3, 12:7, 12:8, 12:9, 12:13, 12:15, 12:23, 12:25, 13:3, 13:13, 13:18, 13:19, 13:21, 14:4, 14:5, 14:7, 14:9, 14:15, 14:19, 14:21, 14:22, 15:3, 15:5, 15:14, 15:21, 15:25, 16:3, 16:6, 16:11, 16:16, 16:22, 17:6, 17:7, 17:11, 17:15, 17:25, 18:5, 18:7, 18:8, 18:10, 18:15, 18:18, 18:20, 18:24, 18:25, 19:3, 19:5, 19:16, 19:18, 19:20, 19:21, 20:3, 20:4, 20:15, 20:23, 21:3, 21:4, 21:9, 21:10, 21:11, 21:12, 21:19, 21:20, 22:4, 22:7, 22:11, 22:15, 22:25, 23:6, 23:7, 23:16, 23:17, 24:1, 24:6, 25:12, 25:13, 26:5, 26:10, 26:12, 26:14, 27:14, 28:4, 29:1, 29:13, 29:13, 29:14 ankle ^[4] - 19:9, 28:16, 28:19, 28:25 another ^[2] - 7:10, 22:22 Antonio ^[1] - 17:3 any ^[12] - 4:21, 5:14, 6:11, 9:8, 19:11, 21:13, 22:24, 23:18, 24:6, 25:2, 26:17, 28:19 anyone ^[3] - 16:7, 18:15, 19:11 anything ^[3] - 20:3, 21:24, 26:1 apart ^[1] - 26:13 apologize ^[1] - 21:16 appeal ^[6] - 10:5, 25:10, 25:12, 25:18, 25:20, 25:22 Appeals ^[1] - 25:17 APPEARANCES ^[1] - 1:13 appeared ^[1] - 13:10 application ^[4] - 6:20, 7:1, 7:6, 7:10 apply ^[1] - 4:14 applying ^[1] - 15:25 appointed ^[1] - 25:22 apprehension ^[1] - 10:12 appropriate ^[3] - 4:11, 4:18, 17:19 approval ^[1] - 24:11 approvals ^[1] - 11:4 are ^[25] - 3:2, 4:4, 4:10, 4:21, 4:23, 5:5, 5:14, 8:6, 8:14, 9:2, 9:23, 10:7, 10:10, 10:24, 11:8, 12:10, 13:2, 13:5, 13:15,</p>	<p>18:1, 18:12, 20:17, 23:18, 23:20, 25:15 argue ^[1] - 13:5 arising ^[1] - 8:24 Arpels ^[1] - 12:4 arrest ^[3] - 14:22, 17:13, 19:8 as ^[34] - 3:25, 4:8, 4:13, 4:22, 5:4, 8:14, 9:6, 9:16, 9:24, 10:8, 10:10, 12:7, 12:12, 13:14, 14:10, 14:14, 15:8, 15:22, 16:11, 16:24, 17:15, 17:20, 17:21, 18:12, 18:20, 19:6, 19:15, 20:15, 21:15, 22:10, 22:14, 24:25, 25:7 ask ^[7] - 15:20, 25:20, 26:3, 26:14, 27:5, 27:16, 28:21 asked ^[4] - 11:2, 15:2, 15:7, 15:13 asking ^[6] - 8:14, 10:24, 11:8, 11:16, 19:15, 19:23 assessed ^[2] - 24:23, 27:6 assessment ^[2] - 8:12, 24:14 assets ^[2] - 27:21, 27:22 assistance ^[6] - 9:21, 10:2, 10:13, 15:1, 15:2, 17:2 associated ^[1] - 14:24 association ^[1] - 17:2 at ^[20] - 5:21, 8:25, 10:3, 10:11, 10:16, 10:19, 11:9, 11:10, 11:14, 11:15, 12:2, 12:5, 12:16, 15:20, 17:24, 18:4, 19:2, 20:17, 20:25, 23:13 attended ^[1] - 27:8 attorney ^[2] - 25:22, 25:23 Attorney's ^[2] - 1:18, 24:8 authorize ^[1] - 24:6 authorized ^[1] - 23:22 authorizing ^[1] - 24:1 Avenue ^[1] - 1:15 avoid ^[1] - 22:6 aware ^[8] - 9:1, 9:13, 10:17, 12:13, 12:18, 13:1, 16:7, 18:10 away ^[1] - 7:5</p>	<p>21:18, 22:23 BEFORE ^[1] - 1:10 before ^[11] - 8:20, 9:12, 9:24, 10:4, 14:7, 17:14, 20:14, 21:10, 27:2, 28:5, 28:24 began ^[2] - 13:13, 14:4 begin ^[1] - 25:1 begins ^[1] - 14:9 behalf ^[3] - 6:7, 21:24, 26:1 being ^[3] - 6:1, 9:19, 20:6 belabor ^[1] - 8:19 believe ^[7] - 5:19, 10:9, 11:24, 17:17, 25:16, 27:8, 28:3 believes ^[1] - 4:22 benefit ^[5] - 11:9, 11:14, 16:10, 16:13 benefitted ^[2] - 16:15, 16:16 best ^[4] - 9:15, 9:17, 29:13 better ^[1] - 21:19 between ^[1] - 13:3 beyond ^[1] - 22:4 binders ^[1] - 14:15 bit ^[2] - 5:8, 19:19 Booker ^[2] - 4:3, 4:6 BOP ^[5] - 26:7, 26:18, 26:22, 28:25, 29:1 both ^[2] - 9:5, 11:14 briefly ^[1] - 4:1 brother ^[1] - 21:2 Bureau ^[2] - 22:9, 22:18 business ^[1] - 21:8 but ^[21] - 3:20, 4:7, 5:17, 5:21, 5:24, 6:1, 7:10, 9:11, 10:15, 11:9, 11:18, 12:3, 12:19, 13:25, 14:19, 14:25, 16:18, 17:5, 19:19, 20:6, 25:21 by ^[20] - 1:24, 4:1, 4:21, 5:4, 5:5, 5:9, 5:14, 5:18, 7:6, 13:9, 13:18, 14:11, 15:6, 18:5, 19:7, 22:23, 22:24, 25:7, 26:13</p>
	<p style="text-align: center;">B</p> <p>back ^[2] - 10:6, 11:15 balance ^[1] - 25:2 Bariven ^[1] - 18:5 based ^[7] - 9:5, 23:1, 27:6, 27:10, 27:14, 27:17, 27:19 basically ^[1] - 27:17 Bastrop ^[2] - 26:19, 26:21 be ^[25] - 4:22, 5:4, 5:19, 5:22, 5:23, 6:2, 6:16, 7:17, 7:19, 10:14, 14:2, 15:10, 15:11, 15:19, 18:21, 22:10, 22:11, 22:14, 23:18, 24:24, 25:3, 25:18, 26:14, 26:16, 28:25 Beaumont ^[3] - 26:19, 26:20, 26:21 because ^[8] - 7:3, 8:19, 10:18, 10:23, 10:25, 15:10, 18:5, 26:20 become ^[1] - 21:4 been ^[19] - 5:2, 6:6, 8:1, 8:19, 9:11, 9:14, 9:22, 10:1, 10:12, 10:13, 11:13, 11:19, 11:20, 13:17, 17:22, 20:23, 21:8,</p>	<p style="text-align: center;">C</p> <p>C ^[1] - 3:1 calculated ^[4] - 4:20, 6:3, 8:1, 12:20 calculation ^[4] - 5:17, 5:21, 6:18, 15:11 call ^[1] - 21:6 called ^[1] - 11:25 calling ^[1] - 17:9 calls ^[1] - 3:4 can ^[8] - 9:16, 17:5, 17:21, 17:25, 20:3, 25:17, 25:20, 28:25 can't ^[4] - 9:20, 12:6, 19:11, 23:8 cannot ^[3] - 10:14, 25:19, 25:22 card ^[1] - 24:10 CAROLYN ^[1] - 1:17 case ^[26] - 3:2, 4:1, 4:3, 4:11, 5:7, 5:11, 7:21, 8:14, 8:15, 8:19, 8:23, 9:8, 9:14, 9:16, 10:5, 11:12, 17:9, 17:15, 19:2, 19:11, 19:12, 19:22, 25:3, 25:14, 25:18, 28:12</p>

Case [1] - 3:4
cases [7] - 8:2, 9:23, 10:7, 10:8, 10:19, 11:21
cash [4] - 28:1, 28:5, 28:6, 28:11
category [2] - 4:16, 8:8
caused [1] - 21:17
CEDENO [1] - 1:14
center [1] - 8:25
cents [1] - 24:22
certain [1] - 13:19
certainly [3] - 17:10, 18:15, 19:3
CERTIFICATE [1] - 29:11
certify [1] - 29:13
character [1] - 17:4
characteristic [1] - 7:4
charges [1] - 24:10
children [3] - 18:1, 20:16, 21:1
choices [1] - 17:10
Christian [1] - 20:23
Circuit [2] - 15:17, 18:25
circumstances [3] - 16:4, 19:20, 19:21
citizen [4] - 23:8, 23:10, 23:11, 23:12
citizens [2] - 20:17, 20:22
Claret [1] - 17:3
clear [1] - 11:18
Cleef [1] - 12:4
close [2] - 15:21, 17:2
closest [1] - 26:20
cohorts [1] - 3:9
collect [1] - 16:18
collected [1] - 16:14
combined [1] - 7:8
come [4] - 20:4, 20:22, 21:6, 21:15
comes [3] - 10:6, 15:21, 21:7
comment [1] - 19:17
comments [3] - 4:21, 20:7, 20:8
commit [1] - 22:22
committed [3] - 15:5, 21:13, 22:9
community [3] - 17:7, 18:16, 19:8
companies [6] - 9:6, 12:20, 12:21, 16:12, 16:13, 16:14
company [2] - 12:16, 16:23
comparable [1] - 19:4
complaint [1] - 18:5
completed [1] - 23:19
complied [1] - 19:9
comply [2] - 22:23, 22:25
computer [1] - 1:25
concerns [1] - 4:8
concur [1] - 6:4
concurrently [2] - 22:11, 22:15
concurs [1] - 7:23
condition [1] - 28:17
conditions [3] - 22:23, 22:24, 22:25
conduct [11] - 7:21, 9:7, 9:10, 10:15, 10:19, 10:24, 13:12, 14:8, 14:9, 18:24, 19:14
congressionally [1] - 4:12
connected [1] - 10:8

connection [1] - 5:1
conservative [2] - 12:17, 12:19
consider [3] - 4:6, 6:22, 7:7
considerable [1] - 4:19
considered [1] - 5:3
conspiracy [2] - 7:5, 8:24
constrain [1] - 4:23
construed [1] - 4:22
contacting [1] - 18:9
context [1] - 19:20
continue [2] - 23:5, 23:15
contributed [1] - 17:11
convey [1] - 13:16
conveys [1] - 20:7
conviction [2] - 17:13, 25:12
cooperate [4] - 13:13, 14:4, 14:9, 15:6
cooperated [2] - 17:24, 19:22
cooperating [1] - 19:6
cooperation [16] - 9:13, 10:13, 11:19, 13:16, 13:25, 14:1, 14:13, 14:23, 14:25, 15:1, 16:10, 17:17, 18:11, 18:19, 18:24, 19:13
cooperator [2] - 11:23, 12:5
cooperators [2] - 9:15, 9:18
correct [2] - 29:3, 29:13
corrupt [1] - 9:7
corruption [3] - 10:22, 14:24, 17:11
cost [1] - 12:18
costs [2] - 25:20, 25:21
could [1] - 14:17
counsel [1] - 28:8
count [6] - 6:5, 7:2, 7:3, 7:5, 15:10
counted [3] - 7:17, 15:11, 15:19
countless [1] - 18:18
country [3] - 10:21, 15:5, 18:6
Counts [2] - 22:11, 22:15
counts [3] - 6:16, 7:4, 25:24
course [2] - 4:21, 21:14
COURT [48] - 1:1, 3:2, 3:9, 3:11, 3:15, 3:19, 3:24, 5:24, 6:6, 6:9, 6:11, 6:17, 6:25, 7:14, 8:3, 8:21, 9:19, 11:6, 11:22, 11:25, 12:7, 13:4, 13:8, 16:2, 20:1, 20:9, 20:12, 21:23, 22:2, 23:11, 23:14, 24:19, 24:22, 26:5, 26:16, 26:21, 27:1, 27:7, 27:12, 27:19, 27:24, 28:7, 28:12, 28:14, 28:18, 28:23, 29:3, 29:8
Court [53] - 2:5, 2:6, 2:6, 3:4, 4:3, 4:7, 4:9, 4:14, 4:17, 4:19, 4:21, 4:22, 8:5, 8:20, 9:9, 9:12, 13:14, 13:16, 14:7, 14:10, 14:12, 15:6, 15:9, 15:13, 15:17, 15:20, 15:22, 15:24, 17:1, 17:4, 17:5, 17:6, 17:21, 17:25, 18:20, 18:23, 19:2, 19:15, 19:16, 19:23, 20:7, 20:14, 22:8, 22:24, 25:4, 25:8, 25:17, 26:13, 29:12, 29:16
Court [2] - 4:6, 5:4
Court's [5] - 4:2, 4:24, 5:10, 19:20, 23:1
courthouse [2] - 13:11, 13:17

courtroom [1] - 10:16
create [1] - 18:21
credit [5] - 24:10, 24:11, 26:4, 26:7
crime [3] - 15:12, 17:10, 22:22
crimes [4] - 14:3, 14:4, 14:5, 14:24
Criminal [1] - 3:4
criminal [3] - 4:16, 8:7, 24:24
CRR [2] - 2:5, 29:12
CSR [2] - 2:5, 29:12
current [1] - 28:3
currently [1] - 10:5
custodial [1] - 10:25
custody [5] - 22:9, 22:17, 26:6, 27:11, 27:14
Customs [3] - 23:6, 23:16, 24:1

D

D [2] - 1:14, 3:1
date [1] - 29:2
day [3] - 12:8, 12:10, 28:5
days [2] - 25:2, 25:19
DC [1] - 1:16
December [2] - 13:11, 26:14
decision [1] - 21:21
deep [1] - 19:13
defendant [14] - 3:12, 8:1, 9:8, 11:2, 13:6, 22:9, 22:13, 22:18, 22:19, 22:21, 24:13, 24:15, 25:1, 25:5
DEFENDANT [3] - 1:21, 20:11, 20:13
defendant's [3] - 7:20, 24:23, 28:10
defendants [3] - 9:14, 19:22, 22:6
defense [4] - 6:14, 6:15, 10:9, 28:8
deferred [1] - 23:13
department [2] - 5:9, 7:23
Department [1] - 1:15
deportation [1] - 23:18
deported [1] - 23:20
describing [1] - 4:1
despite [2] - 6:21, 7:1
detail [1] - 15:6
detailed [1] - 14:17
detained [2] - 18:6
deteriorated [1] - 10:18
determination [1] - 23:1
determinations [1] - 5:5
determine [2] - 4:15, 4:18
determining [3] - 5:2, 7:11, 19:1
deterrence [1] - 17:20
deterrent [1] - 17:16
developing [1] - 21:9
devoted [1] - 21:3
did [7] - 3:16, 6:1, 11:6, 12:12, 24:19, 26:4, 28:8
differ [1] - 16:11
difference [2] - 12:23, 16:17
differences [1] - 13:3
different [1] - 9:22
dime [1] - 16:18

<p>directives [1] - 4:15 discretion [3] - 4:10, 4:18, 4:24 discussing [1] - 11:22 dismiss [1] - 25:25 dismissed [1] - 10:4 disparities [2] - 18:22, 22:6 disputing [1] - 16:5 distinguishing [1] - 12:10 district [2] - 10:23, 22:19 DISTRICT [3] - 1:1, 1:1, 1:11 District [7] - 2:6, 2:7, 11:4, 25:4, 29:12 DIVISION [1] - 1:2 do [8] - 5:17, 11:18, 12:10, 13:2, 13:18, 25:9, 28:19, 29:13 Do [1] - 6:11 documentation [1] - 23:25 does [4] - 18:21, 20:6, 25:14, 27:2 doesn't [1] - 5:16 doing [2] - 4:19, 7:22 don't [4] - 5:19, 11:4, 26:8, 28:2 done [2] - 27:10, 27:13 door [1] - 12:13 double [4] - 7:2, 7:17, 15:10, 15:19 downward [1] - 22:4 drug [1] - 23:2 dual [2] - 23:8, 23:10 due [2] - 24:24, 25:2 during [2] - 19:5, 24:4 dynamics [1] - 17:23</p>	<p>even [3] - 10:7, 12:21, 19:11 ever [3] - 9:18, 13:18, 14:11 every [2] - 8:1, 16:18 everyone [2] - 3:10, 10:16 evidence [2] - 5:1, 5:4 example [1] - 14:18 exceeded [1] - 16:13 except [1] - 18:13 exception [1] - 18:2 executed [1] - 25:7 exercise [2] - 4:9, 4:17 express [3] - 19:13, 21:12, 21:20 extraordinary [2] - 9:15, 10:13 extremely [1] - 11:3</p>	<p>for [61] - 3:6, 3:12, 3:22, 4:4, 4:25, 5:20, 7:11, 7:17, 7:20, 8:1, 8:20, 9:12, 10:4, 10:24, 11:2, 11:3, 11:8, 11:16, 12:18, 13:5, 13:12, 13:17, 13:20, 13:25, 14:4, 14:5, 14:8, 14:17, 15:7, 15:9, 15:11, 15:15, 15:18, 16:3, 18:6, 18:13, 19:7, 19:9, 19:14, 19:18, 20:5, 20:6, 20:13, 20:19, 21:8, 21:10, 21:11, 21:13, 21:16, 21:17, 22:10, 22:11, 22:14, 22:16, 26:4, 26:7, 27:2, 27:15, 27:16 FOR [2] - 1:14, 1:21 foregoing [1] - 29:13 foreign [1] - 15:2 forfeit [1] - 25:5 forfeited [2] - 16:6, 16:18 forfeiting [1] - 16:8 forfeiture [5] - 17:15, 25:6, 25:7, 26:11, 26:12 forth [2] - 4:13, 25:7 forward [1] - 20:4 four [3] - 12:20, 20:16, 21:1 free [1] - 19:8 friends [1] - 18:10 from [20] - 6:14, 8:11, 8:24, 12:24, 13:14, 16:10, 20:22, 21:6, 21:7, 22:13, 22:17, 23:3, 23:9, 23:20, 23:25, 24:3, 26:13, 29:1, 29:14 front [1] - 11:15 fruit [1] - 20:16 full [1] - 7:20 further [2] - 24:13, 24:15 future [2] - 21:19, 23:2</p>
<p>E</p> <p>E [4] - 1:17, 2:1, 3:1 each [1] - 22:15 economy [1] - 21:7 education [1] - 20:23 eight [3] - 17:14, 21:3, 27:13 either [1] - 19:4 else [5] - 3:10, 6:7, 21:24, 26:1, 29:4 employment [1] - 24:3 end [2] - 11:15 endeavor [1] - 4:14 ends [2] - 5:21, 6:1 enforceable [1] - 25:16 Enforcement [3] - 23:7, 23:16, 24:1 engaged [1] - 14:7 English [1] - 20:6 Enrique [1] - 3:5 ENRIQUE [1] - 1:7 enter [1] - 19:23 entered [2] - 11:10, 25:14 entirety [1] - 4:15 entitled [1] - 29:14 entourage [1] - 3:11 entry [1] - 25:19 established [1] - 16:22 estimate [1] - 12:17 evaluates [2] - 18:23, 18:24 evasion [1] - 15:18</p>	<p>F</p> <p>F [1] - 1:21 facing [1] - 11:13 fact [2] - 25:15, 27:10 factors [5] - 4:10, 12:10, 15:24, 15:25, 19:16 facts [4] - 8:19, 8:22, 9:1, 19:21 factual [2] - 4:25, 5:5 faith [1] - 17:7 faithfully [1] - 4:14 familiar [1] - 8:22 family [10] - 17:7, 17:23, 17:25, 18:1, 18:10, 20:15, 20:21, 20:23, 21:2, 21:17 fantastic [1] - 12:5 far [3] - 12:15, 12:21, 18:12 fashion [1] - 4:11 father [1] - 20:25 federal [1] - 22:22 FERKO [1] - 1:17 FERNANDEZ [1] - 1:7 few [1] - 10:4 fiduciary [1] - 24:4 Fifth [2] - 15:17, 18:25 file [3] - 5:10, 25:18, 28:9 filed [2] - 5:10, 25:19 filing [1] - 3:16 final [4] - 5:24, 25:7, 26:10, 26:12 finances [2] - 17:23, 18:12 financial [4] - 24:6, 24:7, 24:8, 28:10 findings [2] - 4:25, 8:6 fine [12] - 8:10, 24:16, 24:19, 26:23, 27:5, 27:9, 27:14, 27:16, 27:21, 27:22, 28:12, 28:14 finish [1] - 21:4 first [3] - 12:13, 13:9, 14:8 five [2] - 17:22, 27:10 fled [1] - 15:5 flow [4] - 28:1, 28:5, 28:6, 28:11 flowed [1] - 10:23 focused [1] - 18:20 follow [2] - 23:7, 23:17 following [1] - 22:25 follows [1] - 24:25</p>	<p>G</p> <p>G [1] - 3:1 gains [2] - 16:7, 17:15 gas [1] - 16:22 generally [3] - 5:3, 25:11, 25:16 get [5] - 3:16, 11:5, 11:7, 26:6, 29:1 give [5] - 4:19, 20:7, 21:11, 25:12, 26:7 given [3] - 15:16, 17:17, 19:20 gives [1] - 7:10 go [1] - 15:25 God [1] - 21:16 goes [1] - 9:25 going [6] - 8:3, 8:18, 13:5, 15:25, 22:3, 22:4 gold [1] - 11:23 gold-plated [1] - 11:23 good [8] - 3:3, 3:8, 3:11, 3:13, 3:15, 3:24, 20:11, 20:12 goods [1] - 12:18 got [1] - 3:20 gotten [2] - 16:6, 17:15 GOVERNMENT [1] - 1:14 government [31] - 3:6, 5:14, 5:16, 6:7, 6:15, 9:9, 9:22, 10:1, 10:8, 12:14, 13:14, 13:19, 13:23, 14:1, 14:5, 14:10, 14:12, 14:17, 14:25, 15:7, 15:14, 16:9,</p>

16:11, 17:18, 19:6, 19:13, 21:25, 22:5, 26:1, 26:24
government's [5] - 7:16, 11:15, 11:20, 13:15, 22:3
governments [2] - 15:2
GPS [1] - 25:24
grandchildren [1] - 20:22
grant [1] - 22:3
granted [1] - 14:11
GRAY [1] - 1:10
great [1] - 26:9
greater [1] - 16:10
grew [1] - 16:21
gristle [1] - 19:19
group [1] - 9:24
grouped [2] - 5:23, 6:16
grouping [5] - 5:17, 5:20, 5:22, 6:21, 7:18
guess [1] - 16:18
guidance [5] - 7:10, 15:17, 18:25, 21:19
guideline [12] - 4:7, 6:19, 6:20, 6:21, 6:23, 7:2, 7:6, 7:8, 7:9, 7:10, 7:12, 9:5
guidelines [12] - 4:4, 4:15, 4:17, 4:20, 4:23, 5:6, 8:6, 8:9, 14:6, 15:9, 15:16, 19:1
guilty [6] - 11:11, 11:12, 12:11, 13:12, 16:4, 17:12

H

H [1] - 1:10
had [8] - 10:20, 11:12, 15:4, 15:5, 19:9, 20:25, 21:1, 27:10
haircut [1] - 12:18
half [2] - 18:7, 26:5
Haltom [1] - 15:18
hand [1] - 7:9
hard [1] - 16:21
harm [2] - 7:12, 15:9
harms [1] - 21:17
has [43] - 3:21, 4:3, 5:2, 8:1, 8:19, 8:23, 9:11, 9:14, 9:21, 10:7, 10:8, 10:9, 10:13, 10:18, 11:19, 13:14, 14:7, 15:7, 15:22, 16:5, 16:9, 17:4, 17:6, 17:11, 17:18, 17:21, 17:22, 18:13, 18:17, 19:6, 19:12, 20:19, 20:23, 21:18, 22:5, 27:1, 27:13, 27:21, 27:22, 28:2, 28:5, 28:6, 28:11
have [28] - 3:19, 5:7, 6:11, 9:18, 9:22, 10:1, 10:12, 11:13, 13:18, 15:16, 15:23, 17:1, 20:2, 20:13, 20:16, 20:21, 21:8, 21:13, 21:17, 22:23, 25:11, 25:14, 25:21, 25:24, 27:6, 28:3, 28:19
having [5] - 9:11, 19:18, 19:21, 24:23, 27:8
he [60] - 9:15, 9:17, 10:7, 11:10, 11:12, 11:14, 11:23, 11:25, 12:24, 14:3, 14:4, 14:16, 14:20, 14:25, 15:1, 15:3, 15:14, 16:5, 16:14, 16:15, 16:18, 16:21, 17:11,

17:13, 17:14, 17:22, 18:13, 18:15, 19:7, 19:8, 19:9, 20:7, 23:8, 23:10, 23:12, 23:13, 26:4, 26:6, 27:1, 27:2, 27:10, 27:21, 27:22, 28:2, 28:5, 28:6, 28:11, 28:15, 28:21, 28:22, 28:23, 28:24, 29:1
He [1] - 26:6
he's [5] - 10:10, 12:4, 12:5, 23:11, 27:20
hear [1] - 13:17
HEARD [1] - 1:10
heard [3] - 13:14, 19:18, 19:21
hearing [1] - 3:25
held [1] - 4:3
helped [2] - 10:7, 10:10
here [9] - 3:6, 3:12, 8:18, 18:1, 18:2, 20:18, 20:20, 21:15
hereby [2] - 22:9, 29:13
high [4] - 11:3, 12:19, 14:2, 14:20
high-level [1] - 14:20
high-ranking [1] - 14:2
highest [3] - 9:8, 9:25, 12:5
highly [1] - 14:1
him [8] - 3:22, 14:22, 18:9, 18:10, 26:7, 28:18, 28:19, 28:24
his [55] - 9:5, 9:6, 9:7, 10:12, 10:13, 10:15, 11:10, 12:16, 12:21, 13:12, 13:16, 14:1, 14:3, 14:4, 14:12, 14:19, 14:21, 15:1, 15:2, 16:5, 16:10, 16:12, 16:13, 16:22, 17:1, 17:2, 17:13, 17:15, 17:17, 17:23, 17:25, 18:1, 18:4, 18:9, 18:10, 18:12, 18:17, 18:18, 18:24, 19:13, 19:14, 20:7, 20:8, 21:16, 25:5, 25:9, 27:17, 28:17
history [3] - 4:16, 8:8, 16:20
Holland [1] - 1:22
home [1] - 18:13
Honor [38] - 3:8, 3:13, 3:18, 3:23, 5:16, 6:4, 6:10, 6:13, 7:16, 8:17, 8:18, 8:22, 8:23, 8:25, 9:13, 11:18, 12:17, 13:1, 13:7, 19:25, 20:5, 20:11, 21:10, 21:15, 22:1, 23:12, 24:17, 24:21, 26:2, 26:3, 26:19, 27:5, 27:23, 28:8, 28:13, 28:15, 28:21, 29:7
HONORABLE [1] - 1:10
Honorable [1] - 20:14
hours [4] - 18:18, 22:17, 23:24, 28:24
house [1] - 19:8
Houston [6] - 1:19, 1:23, 2:3, 2:8, 10:23, 20:18
HOUSTON [2] - 1:2, 1:5
how [4] - 6:2, 7:25, 11:19
however [3] - 16:14, 25:12, 25:16
Hoyt [1] - 9:24
humility [1] - 21:20

I

I [80] - 2:1, 3:1, 3:16, 3:19, 4:1, 5:7, 5:20, 7:22, 7:25, 9:2, 9:4, 9:16, 9:18, 9:20, 10:9, 10:16, 11:4, 11:22, 11:24,

11:25, 12:2, 12:3, 12:5, 12:6, 12:7, 12:10, 12:23, 13:19, 13:20, 13:22, 14:19, 15:7, 15:21, 15:23, 17:1, 17:5, 17:25, 18:23, 19:2, 19:11, 19:17, 20:15, 20:16, 20:21, 20:22, 20:25, 21:1, 21:2, 21:3, 21:6, 21:8, 21:9, 21:10, 21:13, 21:15, 21:16, 21:17, 23:8, 25:9, 25:24, 26:5, 26:6, 26:8, 26:21, 27:5, 27:8, 27:10, 27:14, 27:16, 28:2, 28:3, 28:18, 28:21, 28:23, 29:12
I'll [2] - 27:19, 28:12
I'm [11] - 8:3, 8:18, 11:6, 12:2, 15:25, 16:7, 17:5, 19:15, 19:23, 22:3, 22:4
I've [6] - 3:20, 8:13, 13:17, 14:14, 15:8, 16:24
identified [1] - 14:18
identifying [1] - 15:3
if [16] - 9:17, 10:5, 12:4, 14:11, 20:2, 23:20, 23:22, 25:16, 25:18, 25:19, 25:22, 26:7, 27:5, 27:8, 28:2, 29:4
ill [2] - 16:6, 17:15
ill-gotten [2] - 16:6, 17:15
imagine [1] - 17:21
immediately [3] - 23:5, 23:15, 25:1
Immigration [3] - 23:6, 23:16, 24:1
impact [1] - 10:20
impacted [1] - 17:22
important [1] - 13:2
impose [2] - 8:14, 19:3
imposed [1] - 18:21
imprisoned [1] - 22:10
imprisonment [2] - 22:13, 23:3
in [106] - 3:25, 4:3, 4:8, 4:9, 4:10, 4:11, 4:13, 4:15, 4:19, 4:21, 4:25, 5:2, 5:4, 5:7, 5:10, 6:4, 6:18, 6:21, 6:23, 7:6, 7:7, 7:10, 7:23, 8:1, 8:14, 8:15, 8:23, 9:5, 9:7, 9:8, 9:14, 9:15, 9:16, 10:9, 10:16, 10:17, 10:18, 10:19, 11:11, 11:13, 11:20, 12:13, 12:21, 12:23, 12:25, 13:10, 13:11, 13:15, 13:17, 14:8, 14:14, 14:18, 15:2, 15:5, 15:17, 15:23, 15:25, 16:7, 16:21, 16:22, 16:24, 16:25, 17:2, 17:3, 17:14, 17:22, 17:23, 18:3, 18:5, 18:6, 18:13, 18:20, 18:24, 19:1, 19:2, 19:11, 19:15, 19:19, 19:22, 20:8, 20:18, 20:23, 21:1, 21:8, 22:18, 22:19, 24:2, 24:3, 25:2, 25:5, 25:6, 25:7, 25:13, 25:14, 25:18, 26:6, 26:10, 26:11, 27:11, 27:13, 28:12, 29:14
incarceration [3] - 8:9, 27:6, 27:14
including [2] - 5:8, 9:23
increase [2] - 6:24, 19:1
incur [1] - 24:10
indicate [1] - 17:6
indicated [1] - 15:18
indication [1] - 4:22
indictment [3] - 11:11, 11:12, 12:21
individual [3] - 14:18, 14:22, 15:21
individuals [7] - 8:23, 9:24, 10:10, 13:24, 15:3, 16:25, 18:9

<p>inform ^[1] - 17:25</p> <p>information ^[15] - 5:8, 11:11, 13:21, 13:23, 14:16, 14:17, 14:21, 15:4, 15:24, 17:1, 24:6, 24:7, 24:8, 28:3</p> <p>instituted ^[1] - 23:18</p> <p>instructions ^[2] - 23:7, 23:17</p> <p>intention ^[1] - 21:19</p> <p>interest ^[1] - 25:5</p> <p>interesting ^[1] - 19:17</p> <p>interpreter ^[1] - 3:22</p> <p>interpreting ^[1] - 3:22</p> <p>into ^[2] - 17:9, 25:14</p> <p>invalid ^[1] - 25:17</p> <p>involvement ^[1] - 9:4</p> <p>involving ^[1] - 9:24</p> <p>is ^[81] - 3:6, 3:12, 3:21, 3:22, 3:25, 5:1, 5:3, 5:10, 6:14, 6:24, 7:4, 7:5, 7:16, 7:21, 8:7, 8:22, 8:25, 9:2, 9:4, 9:8, 9:10, 9:13, 9:15, 9:17, 10:5, 10:17, 11:1, 11:3, 11:16, 12:4, 12:17, 12:24, 13:1, 13:10, 13:16, 13:21, 14:6, 14:11, 14:18, 14:20, 15:22, 16:5, 16:17, 16:20, 16:25, 17:7, 17:9, 17:10, 17:18, 17:23, 18:1, 18:2, 18:14, 18:15, 19:1, 19:3, 20:20, 21:20, 22:8, 22:9, 22:19, 23:3, 23:8, 23:10, 23:12, 23:13, 24:13, 24:15, 24:17, 24:19, 25:16, 26:20, 26:23, 27:6, 27:17, 28:3, 29:13</p> <p>issue ^[1] - 10:19</p> <p>issued ^[1] - 26:13</p> <p>it ^[25] - 3:19, 3:20, 4:7, 5:25, 6:1, 7:10, 10:20, 11:4, 11:6, 12:17, 14:1, 15:11, 15:18, 19:18, 21:18, 22:8, 24:13, 24:15, 24:22, 25:18, 26:5, 27:19, 28:11, 28:22</p> <p>it's ^[7] - 7:12, 10:19, 11:15, 11:20, 13:22, 15:10, 19:7</p> <p>its ^[3] - 4:9, 4:17, 10:9</p> <p>itself ^[1] - 19:1</p>	<p style="text-align: center;">K</p> <p>keep ^[1] - 28:21</p> <p>keyed ^[1] - 18:20</p> <p>kind ^[1] - 9:3</p> <p>Knight ^[1] - 1:22</p> <p>know ^[13] - 3:25, 9:12, 9:20, 11:8, 11:13, 12:3, 12:4, 12:13, 15:7, 18:10, 27:12, 27:14, 28:2</p> <p>known ^[1] - 9:24</p> <p>KRISTINE ^[1] - 1:17</p>	<p>26:19</p> <p>Louis ^[9] - 3:14, 3:17, 6:9, 8:4, 13:5, 20:1, 26:17, 27:2, 28:4</p> <p>Louisiana ^[1] - 1:18</p> <p>low ^[1] - 23:2</p> <p>lower ^[2] - 13:1, 17:18</p>
<p style="text-align: center;">J</p> <p>JANUARY ^[1] - 1:7</p> <p>January ^[1] - 28:10</p> <p>jewelry ^[1] - 12:3</p> <p>JIM ^[1] - 2:1</p> <p>Jim ^[1] - 3:14</p> <p>Jose ^[1] - 18:2</p> <p>journey ^[1] - 21:18</p> <p>JUDGE ^[1] - 1:11</p> <p>Judge ^[1] - 9:24</p> <p>judges ^[1] - 4:5</p> <p>judgment ^[9] - 9:7, 12:25, 22:8, 25:2, 25:19, 26:11, 26:13, 26:15, 26:16</p> <p>June ^[1] - 25:8</p> <p>just ^[6] - 11:18, 13:19, 14:10, 16:1, 20:5, 26:14</p> <p>Justice ^[1] - 1:15</p> <p>justice ^[1] - 21:16</p>	<p style="text-align: center;">L</p> <p>laid ^[1] - 10:8</p> <p>Lane ^[1] - 2:2</p> <p>language ^[1] - 20:8</p> <p>Lanie ^[3] - 2:5, 29:12, 29:16</p> <p>large ^[1] - 10:18</p> <p>lastly ^[1] - 18:20</p> <p>LAVINE ^[11] - 2:1, 3:23, 23:12, 27:5, 27:8, 27:13, 27:22, 28:2, 28:13, 28:15, 29:1</p> <p>Lavine ^[4] - 2:2, 3:14, 5:22, 6:2</p> <p>law ^[1] - 22:24</p> <p>learned ^[1] - 16:22</p> <p>learning ^[1] - 21:18</p> <p>least ^[1] - 10:11</p> <p>leaves ^[1] - 27:2</p> <p>led ^[1] - 21:9</p> <p>legally ^[1] - 23:22</p> <p>lengthy ^[1] - 21:18</p> <p>less ^[1] - 19:4</p> <p>lesser ^[1] - 16:14</p> <p>let ^[3] - 13:9, 18:10, 27:24</p> <p>let's ^[3] - 5:13, 19:5, 27:24</p> <p>letters ^[1] - 17:5</p> <p>level ^[12] - 4:16, 5:25, 8:7, 9:3, 9:13, 12:2, 12:5, 13:21, 13:23, 14:20, 17:17, 19:12</p> <p>levels ^[1] - 9:25</p> <p>life ^[4] - 11:13, 17:21, 21:1, 21:14</p> <p>light ^[1] - 4:8</p> <p>like ^[4] - 8:16, 12:3, 12:6, 20:3</p> <p>Lila ^[1] - 18:4</p> <p>lines ^[1] - 24:11</p> <p>little ^[1] - 19:19</p> <p>live ^[1] - 20:18</p> <p>local ^[1] - 22:22</p> <p>locate ^[1] - 14:22</p> <p>locating ^[1] - 15:3</p> <p>location ^[1] - 15:4</p> <p>lodged ^[1] - 18:5</p> <p>long ^[1] - 3:13</p> <p>look ^[3] - 15:20, 19:2, 27:24</p> <p>lost ^[1] - 20:25</p> <p>lot ^[1] - 11:4</p> <p>LOUIS ^[12] - 1:21, 3:13, 3:18, 6:10, 6:13, 6:18, 7:1, 13:7, 13:9, 16:3, 20:5,</p>	<p style="text-align: center;">M</p> <p>M ^[3] - 2:5, 29:12, 29:16</p> <p>made ^[7] - 12:15, 12:16, 12:24, 16:20, 25:3, 26:14, 26:16</p> <p>main ^[1] - 21:7</p> <p>Main ^[1] - 1:22</p> <p>make ^[10] - 9:22, 11:18, 13:19, 14:5, 14:9, 19:17, 19:19, 20:6, 21:9, 26:21</p> <p>making ^[2] - 5:4, 14:6</p> <p>man ^[7] - 16:21, 17:7, 20:15, 21:15</p> <p>management ^[1] - 9:25</p> <p>mandated ^[1] - 4:12</p> <p>mandatory ^[4] - 4:4, 4:23, 22:24, 23:2</p> <p>many ^[2] - 18:18</p> <p>Maracaibo ^[3] - 16:21, 17:3, 21:6</p> <p>Maria ^[2] - 17:3, 18:4</p> <p>MARIHUG ^[1] - 1:14</p> <p>marriage ^[1] - 20:16</p> <p>married ^[2] - 20:15, 21:1</p> <p>material ^[1] - 5:10</p> <p>materials ^[1] - 14:15</p> <p>matter ^[1] - 29:14</p> <p>matters ^[1] - 24:22</p> <p>maximum ^[3] - 7:20, 7:23, 8:1</p> <p>maximums ^[1] - 7:19</p> <p>may ^[5] - 19:17, 23:18, 24:8, 25:12, 28:15</p> <p>me ^[10] - 3:19, 8:14, 13:9, 19:19, 20:13, 20:19, 20:20, 21:12, 26:23, 27:24</p> <p>mean ^[2] - 12:2, 12:5</p> <p>meaningful ^[1] - 11:20</p> <p>measure ^[1] - 19:7</p> <p>mechanical ^[1] - 1:24</p> <p>memorandum ^[9] - 10:9, 13:15, 13:18, 13:22, 14:14, 14:19, 15:23, 16:12, 16:24</p> <p>mention ^[1] - 14:19</p> <p>messages ^[1] - 18:9</p> <p>met ^[1] - 5:2</p> <p>metals ^[1] - 12:3</p> <p>microphone ^[1] - 20:4</p> <p>might ^[3] - 21:13, 21:17, 27:5</p> <p>MILLER ^[1] - 1:10</p> <p>million ^[4] - 9:8, 12:17, 12:25, 16:17</p> <p>mindful ^[1] - 16:25</p> <p>mistakes ^[2] - 21:9, 21:17</p> <p>mom ^[1] - 21:3</p> <p>moment ^[1] - 23:13</p> <p>monetary ^[1] - 24:24</p> <p>money ^[11] - 9:6, 9:7, 12:15, 12:16,</p>

12:22, 12:24, 12:25, 16:8, 16:19, 26:11, 26:13

monitor [4] - 19:9, 28:16, 28:19, 28:25

monthly [2] - 27:25, 28:11

months [19] - 6:19, 6:22, 6:23, 7:8, 7:12, 7:24, 8:9, 8:15, 12:8, 12:9, 15:8, 17:14, 22:5, 22:10, 22:12, 26:4, 26:6, 27:11, 27:13

morality [1] - 20:23

more [4] - 12:15, 12:16, 12:21, 16:18

morning [8] - 3:8, 3:11, 3:13, 3:15, 3:17, 3:24, 20:11, 20:12

most [1] - 9:23

motion [1] - 22:4

Mr [86] - 3:17, 3:21, 3:24, 5:7, 5:22, 6:2, 6:9, 8:4, 8:19, 8:24, 8:25, 9:4, 9:11, 9:14, 9:19, 9:21, 10:2, 10:3, 10:5, 10:24, 11:1, 11:7, 11:9, 11:19, 11:23, 11:24, 12:1, 12:4, 12:7, 12:9, 12:11, 12:12, 12:15, 12:16, 12:25, 13:3, 13:5, 13:10, 13:12, 14:3, 14:16, 14:20, 14:23, 15:6, 15:14, 15:20, 15:21, 15:22, 16:4, 16:6, 16:10, 16:11, 16:13, 16:16, 16:17, 16:20, 16:25, 17:6, 17:10, 17:21, 17:24, 18:8, 18:14, 18:17, 18:24, 19:3, 19:5, 19:22, 20:1, 20:2, 20:5, 20:10, 25:9, 25:11, 26:3, 26:17, 27:2, 27:9, 27:13, 27:15, 27:17, 28:4

MR [24] - 1:21, 1:21, 2:1, 3:13, 3:18, 3:23, 6:10, 6:13, 6:18, 7:1, 13:7, 13:9, 16:3, 20:5, 23:12, 26:19, 27:5, 27:8, 27:13, 27:22, 28:2, 28:13, 28:15, 29:1

mS [2] - 1:14, 1:17

Ms [5] - 3:6, 5:15, 7:14, 8:13, 21:24

MS [22] - 1:14, 1:17, 3:8, 3:10, 5:16, 6:1, 6:8, 7:16, 8:17, 8:22, 9:20, 11:7, 11:24, 12:2, 12:9, 22:1, 23:10, 26:2, 26:9, 26:25, 28:21, 29:7

much [2] - 10:22, 17:18

multiple [1] - 6:5

murder [1] - 15:5

Murta [1] - 10:4

must [8] - 23:5, 23:15, 23:21, 23:23, 23:25, 24:5, 24:10, 25:18

my [19] - 9:16, 11:2, 14:14, 14:19, 15:23, 16:7, 20:19, 20:25, 21:1, 21:2, 21:3, 21:4, 21:12, 21:14, 21:16, 21:17, 21:19, 21:20, 29:13

myself [1] - 21:3

N

N [1] - 3:1

name [1] - 14:19

named [2] - 12:20, 25:6

native [1] - 20:8

nature [1] - 16:3

nearest [1] - 23:23

need [4] - 5:15, 6:11, 25:9, 27:2

negative [3] - 28:2, 28:5, 28:11

New [1] - 1:15

new [1] - 24:10

next [1] - 3:2

nine [1] - 20:21

no [14] - 6:8, 16:5, 17:9, 18:13, 19:7, 20:9, 22:1, 25:24, 26:23, 26:25, 27:21, 27:22, 28:6, 28:14

not [31] - 4:4, 4:22, 5:22, 7:2, 7:17, 7:20, 8:18, 9:17, 10:1, 10:7, 10:12, 11:11, 12:2, 12:12, 13:10, 14:23, 15:10, 16:7, 16:11, 16:17, 17:10, 17:22, 18:14, 18:15, 18:16, 18:21, 19:8, 22:22, 23:10, 24:10, 24:22

note [1] - 7:25

noted [1] - 6:5

nothing [2] - 6:7, 29:4

notice [2] - 25:6, 29:1

now [5] - 5:7, 7:7, 9:12, 11:15, 16:9

number [5] - 8:20, 8:23, 9:22, 12:20, 26:4

numbered [1] - 29:14

numerous [1] - 17:4

NW [1] - 1:15

O

O [1] - 3:1

Oak [1] - 2:2

object [2] - 5:16, 5:17

objection [4] - 7:13, 8:4, 26:25, 28:19

objections [3] - 5:9, 5:14, 6:11

obviously [2] - 8:13, 11:1

occasion [1] - 18:8

OF [3] - 1:1, 1:4, 1:10

of [179] - 1:15, 2:7, 3:5, 3:15, 4:8, 4:9, 4:12, 4:13, 4:21, 4:25, 5:1, 5:8, 5:20, 6:7, 6:19, 6:20, 6:21, 6:23, 7:1, 7:4, 7:6, 7:8, 7:10, 7:11, 7:18, 7:19, 7:20, 7:23, 8:2, 8:8, 8:9, 8:10, 8:15, 8:19, 8:20, 8:23, 8:25, 9:1, 9:3, 9:5, 9:6, 9:7, 9:8, 9:13, 9:17, 9:21, 9:22, 9:24, 9:25, 10:8, 10:11, 10:17, 10:18, 10:19, 10:21, 10:22, 10:24, 11:4, 12:3, 12:15, 12:18, 12:21, 12:23, 12:24, 13:11, 13:21, 13:22, 13:23, 14:8, 14:12, 14:15, 15:1, 15:4, 15:8, 15:9, 15:11, 15:18, 16:3, 16:4, 16:6, 16:7, 16:8, 16:12, 16:16, 16:19, 16:25, 17:7, 17:8, 17:15, 17:17, 17:25, 18:2, 18:5, 18:6, 18:10, 18:14, 18:19, 18:25, 19:11, 19:12, 19:21, 19:22, 19:23, 20:6, 20:16, 20:21, 20:25, 21:2, 21:3, 21:14, 21:18, 21:25, 22:8, 22:9, 22:10, 22:12, 22:14, 22:15, 22:16, 22:17, 22:18, 23:2, 23:7, 23:11, 23:12, 23:17, 24:4, 24:7, 24:11, 24:14, 24:16, 24:24, 25:2, 25:4, 25:6, 25:7, 25:9, 25:13, 25:15, 25:17, 25:19, 26:1, 26:4, 26:10, 26:12, 26:14, 26:15, 26:16, 27:9, 28:1, 28:11, 28:17, 29:2, 29:13, 29:13, 29:14

off [3] - 12:15, 13:9, 28:19

offender [1] - 18:15

offense [8] - 4:16, 5:19, 5:25, 7:3, 7:19, 8:7, 12:12, 16:4

office [3] - 22:19, 23:23, 24:7

Office [2] - 1:18, 24:9

OFFICER [4] - 6:4, 24:17, 24:21, 28:8

officer [2] - 24:5, 24:12

Official [4] - 2:5, 2:6, 29:12, 29:16

officials [1] - 14:2

oil [3] - 16:22, 21:7, 21:8

okay [2] - 23:14, 26:9

oldest [1] - 21:2

on [32] - 3:2, 4:10, 6:7, 7:9, 7:15, 8:4, 9:5, 10:5, 10:20, 13:6, 13:21, 15:17, 16:12, 18:8, 18:21, 21:24, 22:14, 22:21, 23:1, 25:8, 25:20, 25:22, 26:1, 26:13, 26:18, 27:6, 27:10, 27:14, 27:17, 27:19, 28:9, 28:22

once [1] - 21:20

one [19] - 6:13, 7:9, 8:10, 9:17, 9:19, 10:11, 11:2, 12:2, 12:11, 14:18, 16:5, 17:9, 18:2, 18:4, 22:14, 22:16, 26:3, 26:20

only [6] - 6:13, 9:2, 11:1, 12:19, 14:23, 15:21

open [1] - 24:11

opportunity [2] - 20:2, 21:12

or [16] - 4:23, 15:24, 17:9, 17:22, 19:4, 22:22, 23:6, 23:8, 23:16, 24:3, 24:10, 25:13, 25:15, 26:19, 26:21, 28:5

order [5] - 25:24, 26:10, 26:12, 28:18, 28:23

ordered [3] - 23:20, 24:13, 24:15

orders [1] - 25:7

other [4] - 4:8, 5:10, 9:19, 22:6

our [3] - 5:20, 6:18, 7:13

out [4] - 4:10, 10:9, 13:3, 20:21

outlined [4] - 14:14, 14:15, 15:23, 16:11

outside [2] - 15:1, 23:21

outstanding [1] - 6:14

over [5] - 9:12, 17:22, 18:7, 20:19, 21:8

overrule [1] - 8:3

own [3] - 16:22, 17:25, 21:12

P

P [1] - 3:1

P.C [1] - 2:2

page [1] - 13:22

Page [2] - 13:22, 16:12

Paragraph [1] - 6:14

parish [1] - 17:2

part [4] - 10:18, 15:11, 26:14, 26:16

passed [1] - 18:9

PATEL [21] - 1:14, 3:8, 3:10, 5:16, 6:1, 6:8, 7:16, 8:17, 8:22, 9:20, 11:7, 11:24, 12:2, 12:9, 22:1, 23:10, 26:2, 26:9,

26:25, 28:21, 29:7
Patel [5] - 3:6, 5:15, 7:14, 8:13, 21:24
Paulo [1] - 10:4
pay [7] - 24:14, 24:16, 24:23, 25:20, 27:17, 27:21, 27:22
paying [1] - 25:21
payment [2] - 24:24, 25:1
payments [1] - 25:3
PDVSA [3] - 9:25, 14:25, 18:6
Pearson [1] - 11:24
penalties [1] - 24:24
pending [2] - 8:20, 9:23
people [1] - 10:20
percent [2] - 12:18, 14:11
period [2] - 8:8, 8:10
permits [1] - 4:7
person [5] - 12:13, 13:10, 14:7, 15:4, 22:18
personal [1] - 16:20
personally [1] - 16:15
perspective [1] - 6:14
pictures [1] - 14:15
place [1] - 5:21
placed [1] - 22:14
placement [1] - 26:18
plated [1] - 11:23
platinum [1] - 11:24
plea [3] - 11:10, 25:13, 25:14
pleaded [3] - 11:10, 11:12, 12:11
please [1] - 20:4
pled [3] - 13:12, 16:4, 17:11
point [4] - 10:16, 11:7, 11:10, 13:3
pose [1] - 23:2
position [4] - 7:14, 7:16, 11:16, 19:21
positive [1] - 28:6
possible [2] - 10:2, 10:12
Post [1] - 2:2
practice [1] - 16:7
practicing [1] - 13:17
precious [1] - 12:3
prefers [1] - 20:7
prepared [1] - 5:9
preponderance [1] - 5:1
present [4] - 3:21, 20:17, 21:11, 25:17
presentence [7] - 5:3, 5:8, 5:12, 8:6, 23:9, 27:25, 28:9
pretrial [1] - 28:17
prevalent [1] - 20:24
previously [1] - 15:8
prison [1] - 11:13
Prisons [2] - 22:10, 22:18
probation [11] - 5:9, 5:18, 7:22, 22:19, 23:23, 24:5, 24:7, 24:12, 28:7, 28:16, 28:24
PROBATION [4] - 6:4, 24:17, 24:21, 28:8
problem [1] - 26:24
procedures [1] - 4:2
proceed [1] - 25:20

Proceedings [1] - 1:24
proceedings [4] - 3:22, 23:18, 29:9, 29:14
PROCEEDINGS [1] - 1:10
produced [1] - 1:25
professional [1] - 21:14
professionals [1] - 21:5
profile [1] - 28:10
prohibited [1] - 24:3
proof [1] - 4:25
proper [1] - 23:25
property [1] - 25:6
prosecution [2] - 11:20, 17:13
prosecutor [2] - 9:17, 19:18
protection [1] - 18:14
provide [2] - 14:21, 24:5
provided [11] - 9:21, 14:16, 14:23, 14:25, 15:1, 15:3, 17:1, 19:12, 28:4
PSR [2] - 6:5, 28:3
public [1] - 18:14
purposes [8] - 4:12, 5:20, 7:11, 7:17, 15:9, 15:18, 16:3, 20:6
pursuant [1] - 22:7

Q

question [1] - 17:9
questions [1] - 15:13
quickly [1] - 16:1
quite [1] - 5:8

R

R [1] - 3:1
range [8] - 4:20, 6:19, 6:23, 7:6, 7:8, 7:20, 8:1, 8:11
ranges [1] - 4:7
rank [2] - 12:1, 12:3
ranking [1] - 14:2
rarely [3] - 13:17, 13:18, 14:11
read [2] - 3:19, 17:5
ready [2] - 3:2, 10:3
realized [1] - 14:3
really [2] - 7:5, 9:3
reasonable [1] - 11:17
recall [2] - 12:7, 27:8
receive [2] - 15:15, 26:3
received [6] - 9:6, 11:9, 11:14, 12:22, 16:10, 17:4
receives [1] - 18:8
receiving [1] - 11:1
recognized [1] - 17:11
recommendation [2] - 26:17, 26:22
recommended [2] - 8:8, 17:18
record [3] - 13:20, 20:5, 29:14
recorded [1] - 1:24
reduce [2] - 27:16, 27:19
reduced [2] - 27:9, 27:14
reduction [2] - 11:8, 14:11

reenter [2] - 23:22
reflect [1] - 17:8
reflected [2] - 9:4, 12:24
reflection [2] - 20:14, 21:19
Reform [2] - 4:13, 22:8
regarding [2] - 14:21, 15:4
regret [1] - 19:13
rehabilitation [2] - 18:17, 18:18
reins [1] - 21:2
relative [1] - 7:12
release [8] - 8:10, 22:13, 22:14, 22:17, 22:21, 23:3, 24:7, 28:17
released [2] - 17:14, 22:20
reliable [1] - 5:4
rely [1] - 4:10
remain [1] - 23:21
remains [1] - 6:13
remember [1] - 23:8
remove [1] - 28:16
removed [1] - 28:25
reorganize [1] - 21:1
report [15] - 5:3, 5:8, 5:12, 8:6, 22:18, 23:5, 23:6, 23:9, 23:15, 23:23, 27:25, 28:9, 28:15, 28:24
Reporter [4] - 2:5, 2:6, 29:12, 29:16
REPORTER'S [1] - 29:11
reporting [1] - 23:17
reports [3] - 28:22, 28:23, 28:25
represent [1] - 25:22
request [1] - 6:19
requested [2] - 22:5, 24:6
required [2] - 5:5, 22:24
requirement [1] - 23:3
requirements [1] - 23:17
requires [4] - 4:6, 7:18, 28:18, 28:24
resolved [1] - 6:6
resources [2] - 18:12, 18:13
respect [5] - 5:12, 5:24, 10:11, 14:18, 14:24
response [1] - 28:9
responsibility [5] - 13:12, 14:4, 14:8, 19:14, 21:13
responsible [2] - 21:10, 21:15
result [8] - 6:18, 6:21, 6:23, 6:24, 7:23, 9:6, 10:22, 19:15
results [1] - 7:7
return [1] - 23:24
review [1] - 15:25
reviewed [2] - 5:7, 8:13
revised [1] - 6:5
right [27] - 3:2, 3:16, 3:21, 3:24, 5:24, 6:6, 6:17, 6:25, 7:14, 8:3, 8:13, 12:7, 13:4, 13:8, 16:2, 21:24, 22:2, 22:3, 25:11, 25:21, 26:17, 27:1, 27:4, 27:12, 27:19, 28:7, 29:4
rights [3] - 25:9, 25:13, 25:15
RINCON [1] - 1:7
Rincon [49] - 3:5, 3:21, 3:24, 5:7, 8:19, 8:24, 9:11, 9:21, 10:3, 10:5, 11:1, 11:7,

11:9, 12:1, 12:4, 12:11, 12:15, 13:3, 13:10, 13:12, 14:3, 14:16, 14:20, 14:23, 15:6, 15:14, 15:20, 15:21, 16:4, 16:6, 16:16, 16:17, 16:20, 16:25, 17:6, 17:24, 18:8, 18:14, 18:17, 19:5, 19:22, 20:2, 20:5, 20:10, 25:9, 25:11, 26:3, 27:13, 27:17

Rincon's [10] - 9:4, 9:14, 10:2, 10:24, 11:19, 16:10, 16:13, 17:10, 17:21, 18:24

RINCON-FERNANDEZ [1] - 1:7

risk [2] - 17:24, 23:2

RMR [2] - 2:5, 29:12

roam [1] - 19:8

Roberto [2] - 3:5, 18:2

ROBERTO [1] - 1:7

role [1] - 24:4

ROLLINSON [1] - 1:17

Room [1] - 2:8

ruin [1] - 17:23

rulings [2] - 5:15, 6:12

run [1] - 22:15

Rusk [1] - 2:7

Ryerson [2] - 3:14, 28:4

RYERSON [1] - 1:21

S

S [1] - 3:1

safety [1] - 17:25

said [6] - 9:11, 10:15, 11:24, 12:6, 15:14, 16:9

Sam [1] - 3:14

same [4] - 5:21, 5:25, 12:2, 13:10

SAMUEL [1] - 1:21

San [1] - 17:3

say [9] - 6:20, 8:16, 9:2, 9:16, 13:20, 20:3, 24:20, 27:21

saying [1] - 13:9

says [3] - 7:2, 7:6, 7:11

scheme [2] - 12:16, 12:24

schooling [1] - 21:4

second [1] - 28:15

Section [2] - 4:11, 7:18

see [2] - 19:5, 27:24

seek [1] - 23:25

self [1] - 16:20

self-made [1] - 16:20

sentence [18] - 4:8, 4:11, 4:18, 8:15, 9:5, 10:25, 11:16, 12:8, 12:9, 15:7, 17:8, 17:18, 17:20, 18:21, 19:3, 19:23, 25:12

sentenced [1] - 8:23

sentencing [28] - 3:25, 4:2, 4:4, 4:6, 4:9, 4:12, 4:20, 4:21, 4:24, 5:1, 8:16, 10:9, 11:23, 13:6, 13:15, 13:18, 13:22, 14:6, 14:14, 14:19, 15:8, 15:23, 16:12, 16:24, 18:22, 19:16, 22:6, 27:9

SENTENCING [1] - 1:10

Sentencing [2] - 4:13, 22:7

separate [2] - 5:22, 26:12

separated [1] - 5:20

separately [3] - 6:22, 7:3, 7:7

serious [3] - 9:3, 9:10, 17:10

seriousness [1] - 17:8

serve [1] - 26:4

served [6] - 17:14, 19:24, 22:11, 26:4, 27:10, 27:20

serves [2] - 17:15, 17:20

set [4] - 4:10, 4:13, 10:8, 25:7

seven [1] - 26:5

shall [10] - 22:14, 22:18, 22:22, 22:25, 24:13, 24:15, 24:24, 25:1, 25:5

shambles [1] - 18:13

share [2] - 16:14, 24:8

she [1] - 18:6

Shiera [10] - 8:25, 9:19, 12:12, 12:16, 13:3, 15:14, 15:22, 16:11, 27:15

Shiera's [6] - 11:23, 12:7, 12:9, 12:25, 19:3, 27:9

should [15] - 5:19, 5:22, 5:23, 6:2, 6:16, 6:22, 7:2, 7:17, 15:10, 15:11, 15:15, 15:24, 19:2, 26:6, 26:7

shouldn't [1] - 15:19

shown [1] - 18:17

shows [2] - 27:25, 28:11

siblings [1] - 21:4

sign [1] - 27:2

signed [4] - 25:24, 27:1, 28:18, 28:24

significance [2] - 14:12, 19:12

significant [16] - 9:3, 9:4, 9:10, 10:16, 10:20, 10:25, 11:1, 11:8, 11:19, 12:14, 13:23, 13:25, 16:8, 17:16, 17:24

significantly [3] - 9:23, 13:1, 17:21

since [2] - 13:11, 19:17

sir [3] - 21:23, 27:4, 29:3

situation [1] - 10:17

six [4] - 9:12, 17:22, 19:7, 19:9

small [2] - 19:7, 20:14

Smith [3] - 2:5, 29:12, 29:16

so [32] - 4:19, 5:12, 6:6, 6:14, 6:24, 7:1, 7:9, 7:22, 8:5, 8:16, 8:25, 9:9, 9:20, 10:13, 10:24, 11:7, 11:14, 11:15, 11:22, 13:2, 13:23, 13:25, 14:3, 14:12, 14:16, 15:5, 15:13, 15:20, 18:8, 21:3, 28:23, 28:25

sold [1] - 12:18

some [7] - 12:10, 14:7, 15:17, 19:22, 20:13, 25:13, 25:15

something [1] - 13:16

son [1] - 18:2

SONALI [1] - 1:14

sorry [1] - 26:12

sort [5] - 7:18, 7:19, 9:5, 10:18, 12:3

sought [2] - 14:25, 15:6

sound [1] - 19:17

South [1] - 2:2

Southern [3] - 11:3, 25:4, 29:12

SOUTHERN [1] - 1:1

southern [1] - 2:7

Spain [3] - 18:3, 18:5

Spanish [1] - 20:8

speak [1] - 20:6

special [2] - 8:11, 24:14

specific [1] - 7:3

specifically [2] - 7:2, 7:9

Spencer [1] - 3:14

SPENCER [1] - 1:21

spouse [1] - 18:4

stacked [1] - 7:19

stand [2] - 8:18, 21:10

standard [3] - 4:25, 5:2, 22:23

stands [1] - 14:7

start [3] - 4:1, 5:13, 13:9

state [2] - 21:7, 22:22

State [1] - 10:18

stated [1] - 15:8

States [12] - 2:6, 3:5, 20:22, 23:21, 23:23, 24:2, 24:14, 24:16, 25:3, 25:6, 29:12

STATES [3] - 1:1, 1:4, 1:11

statutory [4] - 4:8, 7:19, 7:23, 7:25

stenography [1] - 1:24

still [1] - 10:24

stood [1] - 10:3

Street [2] - 1:18, 1:22

submit [3] - 9:9, 10:25, 18:23

subsidiary [1] - 18:6

substance [1] - 23:2

substantive [1] - 7:5

subsumed [1] - 7:4

such [1] - 14:20

suffering [1] - 16:25

sufficiently [1] - 5:3

Suite [3] - 1:19, 1:23, 2:3

superseding [1] - 11:11

supervised [3] - 8:10, 22:14, 22:21

supervision [1] - 24:4

supplemental [1] - 28:9

supporting [1] - 21:3

Supreme [1] - 4:3

sure [5] - 11:6, 13:20, 14:6, 17:6, 20:6

surrender [5] - 23:6, 23:16, 26:23, 27:3, 29:2

suspended [1] - 23:4

T

tailor [1] - 4:7

take [2] - 21:2, 21:13

taken [1] - 7:5

taking [1] - 28:19

target [3] - 13:24, 14:2, 14:20

tax [6] - 5:19, 7:3, 12:11, 15:10, 15:18

team [1] - 9:25

tell [2] - 15:9, 17:5

tells [2] - 14:12, 15:5

ten [1] - 9:16

term [4] - 19:18, 22:10, 22:14, 24:4
terms [5] - 9:7, 12:23, 13:15, 13:19, 22:15
testify [2] - 10:3, 10:6
testing [1] - 23:3
Texas [8] - 1:19, 1:23, 2:3, 2:7, 2:8, 11:4, 25:4, 29:13
TEXAS [2] - 1:1, 1:5
than [3] - 12:16, 17:18, 19:4
thank [15] - 3:18, 8:17, 13:4, 19:25, 20:1, 20:13, 21:22, 21:23, 22:2, 23:14, 24:19, 28:13, 29:6, 29:7, 29:8
thanks [2] - 21:11
that [143] - 4:3, 4:10, 4:22, 4:23, 5:2, 5:13, 5:14, 5:19, 5:22, 5:23, 6:2, 6:5, 6:11, 6:13, 6:15, 6:20, 6:21, 6:24, 7:2, 7:4, 7:5, 7:11, 7:15, 7:17, 7:18, 7:22, 7:25, 8:4, 8:8, 8:24, 9:2, 9:6, 9:10, 9:11, 9:16, 9:18, 9:21, 9:23, 9:25, 10:1, 10:5, 10:7, 10:11, 10:15, 10:17, 10:21, 10:22, 10:23, 10:25, 11:2, 11:3, 11:7, 11:12, 11:14, 11:16, 12:6, 12:13, 12:20, 12:24, 13:2, 13:9, 13:11, 13:13, 13:15, 13:16, 13:19, 13:23, 13:25, 14:1, 14:5, 14:7, 14:8, 14:12, 14:15, 14:17, 14:20, 14:22, 15:1, 15:5, 15:9, 15:15, 15:17, 15:21, 15:24, 16:5, 16:8, 16:15, 16:16, 16:17, 16:19, 17:6, 17:9, 17:11, 17:20, 17:25, 18:1, 18:10, 18:21, 19:3, 19:4, 19:5, 19:10, 19:16, 20:3, 21:1, 21:3, 21:13, 21:17, 22:5, 22:8, 22:23, 23:1, 23:18, 24:7, 24:13, 24:15, 24:22, 25:17, 26:3, 26:6, 26:7, 26:11, 26:13, 26:14, 26:16, 27:2, 27:6, 27:9, 27:10, 28:4, 28:11, 28:18, 28:21, 28:23, 28:25, 29:13
that's [5] - 6:2, 6:6, 7:13, 7:25, 11:25
THE [52] - 1:10, 1:14, 1:21, 3:2, 3:9, 3:11, 3:15, 3:19, 3:24, 5:24, 6:6, 6:9, 6:11, 6:17, 6:25, 7:14, 8:3, 8:21, 9:19, 11:6, 11:22, 11:25, 12:7, 13:4, 13:8, 16:2, 20:1, 20:9, 20:11, 20:12, 20:13, 21:23, 22:2, 23:11, 23:14, 24:19, 24:22, 26:5, 26:16, 26:21, 27:1, 27:7, 27:12, 27:19, 27:24, 28:7, 28:12, 28:14, 28:18, 28:23, 29:3, 29:8
the [336] - 3:2, 3:4, 3:6, 3:12, 3:22, 4:1, 4:3, 4:4, 4:7, 4:9, 4:10, 4:12, 4:13, 4:14, 4:15, 4:16, 4:17, 4:18, 4:19, 4:20, 4:21, 4:22, 4:23, 4:25, 5:1, 5:4, 5:5, 5:8, 5:9, 5:10, 5:12, 5:14, 5:16, 5:17, 5:19, 5:20, 5:21, 5:24, 5:25, 6:4, 6:7, 6:13, 6:14, 6:15, 6:20, 7:1, 7:3, 7:4, 7:5, 7:6, 7:9, 7:10, 7:11, 7:12, 7:16, 7:17, 7:18, 7:19, 7:20, 7:22, 7:25, 8:5, 8:6, 8:7, 8:9, 8:19, 8:22, 8:25, 9:2, 9:3, 9:5, 9:8, 9:9, 9:13, 9:15, 9:17, 9:19, 9:21, 9:23, 9:24, 9:25, 10:1, 10:4, 10:8, 10:9, 10:11, 10:17, 10:18, 10:19, 10:20, 10:22, 11:3, 11:9, 11:11, 11:14, 11:15, 11:16, 11:20, 12:2, 12:5, 12:13, 12:14, 12:20, 12:21, 12:23,

12:24, 12:25, 13:5, 13:10, 13:14, 13:15, 13:16, 13:19, 13:20, 13:21, 13:22, 13:23, 13:25, 14:1, 14:5, 14:6, 14:10, 14:11, 14:12, 14:15, 14:16, 14:17, 14:24, 14:25, 15:4, 15:6, 15:7, 15:8, 15:9, 15:10, 15:11, 15:13, 15:14, 15:16, 15:17, 15:20, 15:21, 15:22, 15:24, 15:25, 16:3, 16:4, 16:6, 16:9, 16:11, 16:12, 16:13, 16:15, 16:16, 16:17, 16:22, 16:24, 16:25, 17:1, 17:4, 17:5, 17:6, 17:8, 17:11, 17:18, 17:21, 17:25, 18:2, 18:13, 18:14, 18:16, 18:20, 18:23, 18:24, 18:25, 19:2, 19:5, 19:6, 19:12, 19:13, 19:15, 19:16, 19:20, 19:21, 19:23, 20:2, 20:4, 20:5, 20:7, 20:16, 20:25, 21:2, 21:6, 21:7, 21:11, 21:14, 21:17, 21:25, 22:3, 22:4, 22:5, 22:7, 22:8, 22:9, 22:13, 22:17, 22:18, 22:19, 22:21, 22:23, 22:25, 23:1, 23:2, 23:9, 23:13, 23:20, 23:21, 23:22, 23:23, 24:2, 24:5, 24:6, 24:7, 24:8, 24:11, 24:13, 24:14, 24:15, 24:16, 24:17, 24:19, 24:23, 24:24, 25:1, 25:2, 25:3, 25:5, 25:6, 25:7, 25:16, 25:17, 25:19, 25:20, 25:21, 25:24, 26:1, 26:7, 26:10, 26:13, 26:15, 26:16, 26:18, 26:20, 26:22, 26:24, 27:5, 27:6, 27:9, 27:10, 27:14, 27:16, 27:19, 27:25, 28:2, 28:3, 28:5, 28:8, 28:9, 28:10, 28:16, 28:18, 28:19, 28:23, 28:25, 29:1, 29:2, 29:13, 29:13, 29:14
The [2] - 4:14, 29:9
their [5] - 4:15, 16:12, 21:4, 23:7, 23:17
them [5] - 6:22, 7:7, 10:11, 11:25, 13:20
then [6] - 6:22, 6:23, 10:6, 14:4, 14:9, 26:10
theory [1] - 25:17
there [7] - 5:14, 5:22, 10:10, 10:18, 12:10, 26:11, 26:12
there's [1] - 29:4
thereafter [1] - 4:17
therefore [2] - 8:5, 22:7
these [4] - 8:6, 10:19, 11:20, 25:15
they [8] - 4:23, 5:23, 6:2, 7:17, 9:2, 14:21, 17:6, 26:7
they're [2] - 18:10, 20:17
thing [2] - 5:25, 9:2
things [1] - 26:2
think [19] - 5:20, 7:21, 7:22, 9:5, 10:16, 11:4, 11:22, 11:25, 12:10, 12:23, 13:2, 13:22, 15:21, 19:2, 19:11, 26:5, 26:6, 27:10, 28:21
this [52] - 3:16, 3:25, 4:21, 5:11, 7:21, 8:1, 8:14, 8:15, 8:19, 8:20, 8:23, 8:24, 9:8, 9:10, 9:12, 9:14, 9:15, 10:8, 10:16, 10:23, 11:12, 12:15, 13:10, 13:17, 13:21, 15:5, 17:9, 17:14, 19:2, 19:8, 19:12, 19:16, 19:17, 19:18, 19:19,

19:20, 19:22, 20:14, 20:16, 20:17, 20:21, 21:8, 21:9, 22:24, 25:2, 25:7, 25:14, 25:18, 26:13, 28:12
those [9] - 9:1, 13:2, 14:5, 16:1, 17:2, 17:5, 17:6, 20:7, 25:13
though [1] - 12:21
threat [2] - 18:15, 18:16
three [3] - 6:15, 8:10, 20:17
through [6] - 10:23, 16:1, 18:9, 18:18, 25:3
throughout [1] - 21:14
time [9] - 3:13, 13:11, 15:15, 18:4, 19:5, 19:23, 20:17, 26:4, 27:20
timely [1] - 16:4
to [164] - 3:15, 4:1, 4:6, 4:7, 4:11, 4:12, 4:14, 4:15, 4:18, 4:20, 4:22, 5:4, 5:12, 5:17, 5:24, 5:25, 8:3, 8:10, 8:11, 8:14, 8:16, 8:18, 9:9, 9:21, 9:22, 9:25, 10:3, 10:8, 10:11, 11:5, 11:7, 11:11, 11:12, 11:18, 11:20, 12:2, 12:11, 12:14, 13:3, 13:5, 13:13, 13:16, 13:19, 13:24, 14:2, 14:4, 14:5, 14:9, 14:10, 14:17, 14:18, 14:20, 14:22, 14:24, 15:1, 15:6, 15:20, 15:21, 15:22, 15:25, 16:11, 16:13, 16:18, 17:1, 17:2, 17:5, 17:8, 17:11, 17:24, 18:4, 18:9, 18:10, 18:15, 18:16, 18:21, 18:23, 19:4, 19:7, 19:8, 19:13, 19:17, 19:19, 19:23, 20:3, 20:6, 20:7, 20:13, 20:25, 21:1, 21:3, 21:9, 21:11, 21:12, 21:16, 21:20, 22:3, 22:4, 22:5, 22:7, 22:9, 22:10, 22:11, 22:15, 22:18, 22:19, 23:5, 23:6, 23:15, 23:16, 23:22, 23:23, 24:1, 24:6, 24:14, 24:16, 24:23, 25:3, 25:6, 25:9, 25:11, 25:17, 25:20, 25:21, 25:22, 25:24, 26:10, 26:17, 26:22, 27:2, 27:15, 27:16, 27:17, 27:21, 27:22, 28:9, 28:15, 28:16, 28:18, 28:19, 28:24, 28:25, 29:13
today [2] - 28:16, 28:20
together [2] - 5:23, 6:16
took [4] - 3:19, 11:4, 12:18, 14:15
total [6] - 4:16, 8:7, 22:11, 22:16, 24:24, 27:25
totally [1] - 18:12
toward [1] - 21:19
town [1] - 21:6
trade [1] - 16:22
TRANSCRIPT [1] - 1:10
transcript [2] - 1:25, 29:13
traveled [1] - 18:4
treat [1] - 7:3
trial [3] - 5:4, 10:3, 10:5
tried [1] - 17:5
true [1] - 29:13
turmoil [1] - 17:23
two [5] - 7:4, 9:15, 9:17, 10:10, 26:2

U

U.S [8] - 1:15, 1:18, 4:3, 15:18, 23:6,

<p>23:16, 24:1, 24:8 ultimate [2] - 4:24, 5:17 under [9] - 4:16, 4:20, 6:20, 8:9, 15:25, 19:8, 19:16, 22:5, 23:13 underlying [1] - 15:12 undermines [1] - 7:11 undermining [1] - 17:9 understanding [2] - 11:3, 29:14 understate [2] - 9:20, 12:6 understated [1] - 10:14 undertaken [1] - 5:18 unique [1] - 19:20 unit [1] - 20:21 United [12] - 2:6, 3:5, 20:22, 23:21, 23:23, 24:2, 24:14, 24:16, 25:3, 25:6, 29:12 UNITED [3] - 1:1, 1:4, 1:11 unless [1] - 23:21 unlikely [1] - 14:1 unpaid [1] - 25:2 until [3] - 23:18, 28:22, 28:23 unwarranted [2] - 18:21, 22:6 up [6] - 5:21, 6:1, 8:18, 9:25, 16:21, 25:13 updated [1] - 28:10 upon [3] - 21:9, 22:13, 23:3 us [1] - 20:24 use [2] - 14:17, 20:4 used [3] - 5:4, 13:15, 19:19 uses [1] - 13:19 using [1] - 12:20</p>	<p>28:16 wash [1] - 6:1 Washington [1] - 1:16 way [1] - 10:17 we [23] - 3:2, 5:17, 5:19, 5:21, 6:1, 6:4, 6:19, 7:21, 9:22, 10:24, 10:25, 11:8, 11:18, 11:22, 12:18, 12:19, 13:2, 15:20, 17:17, 26:3, 26:14, 28:4 we'd [1] - 28:21 we're [2] - 11:16, 29:4 we've [2] - 6:5, 11:1 weeks [1] - 10:4 weight [1] - 4:20 Well [1] - 15:14 well [9] - 4:8, 7:7, 7:11, 8:14, 9:1, 10:10, 10:17, 15:16, 16:9 were [6] - 8:25, 11:22, 12:19, 12:20, 14:21, 29:9 what [5] - 8:16, 11:25, 14:6, 16:18, 17:18 what's [1] - 7:14 whatever [1] - 21:21 whatsoever [1] - 28:6 when [5] - 7:19, 11:22, 14:25, 15:13, 18:23 where [2] - 12:1, 21:7 whereabouts [1] - 14:21 whether [2] - 5:2, 19:1 which [26] - 5:5, 5:9, 5:10, 6:18, 6:22, 7:6, 7:7, 7:21, 7:22, 9:4, 9:8, 10:4, 11:10, 12:12, 12:19, 12:25, 15:6, 19:22, 20:16, 20:23, 21:10, 22:19, 25:14, 27:17, 28:10, 28:16 while [3] - 3:19, 7:17, 22:21 who [14] - 3:6, 3:12, 3:22, 10:10, 13:10, 14:7, 14:18, 15:2, 15:4, 18:2, 19:12, 20:18, 20:19 wife [2] - 18:1, 20:19 will [12] - 4:10, 4:14, 4:17, 4:19, 8:5, 9:2, 10:6, 12:4, 26:8, 26:16, 26:21, 29:1 wish [1] - 20:3 with [32] - 5:1, 5:12, 5:13, 5:21, 5:24, 6:2, 8:7, 8:22, 9:18, 10:7, 10:11, 14:5, 14:18, 14:23, 14:24, 16:11, 17:2, 18:2, 19:6, 19:9, 20:20, 21:1, 21:12, 22:6, 22:23, 22:25, 24:5, 24:8, 26:23, 26:24 within [6] - 4:15, 7:4, 22:17, 23:24, 25:2, 25:19 without [4] - 10:2, 10:12, 24:11, 25:21 won't [1] - 14:19 words [1] - 21:12 work [1] - 24:2 worked [3] - 9:18, 16:21, 17:22 worries [1] - 20:9 would [20] - 6:18, 6:19, 6:20, 6:21, 6:23, 7:20, 7:23, 7:25, 8:16, 9:9, 10:1, 10:12, 10:25, 11:13, 12:1, 14:2, 15:20, 20:3, 21:4, 27:16 wrongdoing [1] - 16:5</p>	<p>Y</p> <p>yeah [1] - 6:1 year [4] - 18:7, 22:14, 22:16 years [15] - 8:10, 8:20, 9:12, 9:16, 13:18, 16:7, 17:22, 17:23, 18:18, 19:7, 19:9, 19:18, 20:15, 20:20, 21:9 yes [13] - 3:8, 3:23, 6:10, 6:13, 8:21, 9:20, 13:7, 24:21, 26:2, 26:19, 27:4, 27:7, 29:3 yesterday [1] - 28:5 yields [1] - 8:8 York [1] - 1:15 you [75] - 3:15, 3:18, 3:25, 6:11, 6:22, 7:2, 7:7, 8:14, 8:16, 8:17, 9:12, 9:20, 11:8, 11:13, 12:1, 12:3, 12:4, 12:13, 13:4, 13:5, 13:16, 13:18, 19:25, 20:1, 20:2, 20:3, 20:13, 21:10, 21:11, 21:16, 21:20, 21:22, 21:23, 22:2, 23:1, 23:5, 23:14, 23:15, 23:20, 23:21, 23:22, 23:23, 23:24, 23:25, 24:1, 24:5, 24:10, 24:19, 24:20, 25:11, 25:12, 25:13, 25:16, 25:17, 25:18, 25:19, 25:20, 25:21, 25:22, 27:6, 27:9, 27:12, 27:14, 27:16, 27:21, 28:3, 28:13, 28:19, 29:6, 29:7, 29:8 you're [3] - 12:12, 24:3, 27:12 Your [38] - 3:8, 3:13, 3:18, 3:23, 5:16, 6:4, 6:10, 6:13, 7:16, 8:17, 8:18, 8:22, 8:23, 8:25, 9:13, 11:18, 12:17, 13:1, 13:7, 19:25, 20:5, 20:11, 21:10, 21:15, 22:1, 23:12, 24:17, 24:21, 26:2, 26:3, 26:19, 27:5, 27:23, 28:8, 28:13, 28:15, 28:21, 29:7 your [14] - 3:9, 3:11, 3:16, 4:1, 4:11, 5:7, 7:14, 8:3, 8:14, 21:21, 24:4, 25:12, 25:15</p> <p>Z</p> <p>zero [1] - 27:18 Zimmermann [2] - 2:1, 2:2 Zulia [1] - 21:7</p>
<p>V</p> <p>Van [1] - 12:4 vary [1] - 22:4 Venezuela [5] - 10:17, 16:21, 17:1, 23:11, 23:12 Venezuelan [1] - 10:1 versus [2] - 3:5, 15:18 very [12] - 8:22, 9:2, 9:3, 9:10, 10:15, 10:19, 10:20, 11:8, 12:14, 12:19, 13:2 via [1] - 1:25 violent [1] - 18:15 voluntary [2] - 26:23, 27:3 VS [1] - 1:5</p>		
<p>W</p> <p>waive [2] - 25:15, 28:12 waiver [1] - 25:16 waivers [1] - 25:15 want [3] - 4:1, 11:18, 13:19 warranted [1] - 19:2 was [37] - 5:9, 9:4, 10:4, 10:15, 10:22, 11:23, 12:8, 12:9, 12:13, 12:14, 12:17, 12:19, 12:25, 13:1, 13:23, 13:24, 13:25, 14:1, 14:16, 14:20, 16:15, 16:17, 17:14, 18:6, 19:6, 19:7, 19:8, 19:17, 21:9, 26:5, 26:6, 26:11, 26:12, 26:13, 28:5,</p>		